

**Before the Licensing Sub Committee  
Of Torbay Council**

**Representations on behalf of the Premises Licence Holder Lifestyle Enterprises (UK)  
Ltd  
In relation to Review Proceedings against Mambo/the Beach Hut**

1. This document is prepared on behalf of the Premises Licence Holder (PLH) for the purposes of dealing with the Review proceedings due to be held on 22<sup>nd</sup> June 2012. They are not meant to be exhaustive but in particular should be considered alongside the verbal submissions and amplifications made as well as a document supplied entitled 'Code of Conduct for Responsible Retailing'

**Background**

2. On 31<sup>st</sup> May 2012 as of a result of an Application for an expedited review having been made by Devon and Cornwall Constabulary (the Police) the Licensing sub Committee (the Committee) suspended the Premises Licence pending a full review hearing.
3. The sub Committee will no doubt have the decision that was communicated in writing to the Parties.
4. Inter alia it was considered relevant that the expedited process had not enabled the PLH to put adequate measures in place prior to the interim steps hearing in order to deal with the concerns raised.

5. DCMS Guidance (2007) produced to assist in dealing with interim steps indeed states (3.7) 'that in some circumstances, it might be better to seek suspension of the licence pending a full review, rather than imposing a range of costly conditions or permanent adjustments'.
6. It was accepted by the PLH that, having distilled the mischief highlighted by the Police, in order for the licensing objectives to be upheld, changes were needed to the operating procedures and checks and balances within the management of the Premises. Further it had been apparent that the CCTV coverage and systems needed upgrading.
7. The Application was made specifically in response to two incidents, however, prior to these it is common knowledge as between the Police and the PLH that the PLH was undertaking a wholesale review of the premises ( with Police involvement) operating procedures in order to reinforce their commitment to the Licensing objectives. The Police indicated that the two incidents left them no option but to instigate a review themselves as the nature of the problems that arose could not wait for the PLH to act unilaterally.
8. These proceedings have had the effect of accelerating the consideration the PLH was giving to their own procedures and given them the opportunity to meet the challenges highlighted by the Polices concerns.
9. The Document attached 'Code of Practice for Responsible Retailing' will be effective immediately should the Committee decide not to further suspend or revoke the licence. In this vein, without wishing to prejudge the outcome, all staff and subcontractors will have been inducted as to its contents and their obligations prior to the Review hearing.
10. Attached to these representations, that are submitted by the PLH of whom Mrs J Eyres will speak on behalf of at the hearing are numerous documents:

- The enhanced Code of Conduct
- Comments by the DPS at the time relating to incidents outlined by the Police
- Press coverage 22/03/11 outlining the spirit in which the PLH conduct themselves.
- Minutes of meetings held with the Police March 2011 to date
- Correspondence between the Police and the DPS/PLH including telephone notes and e mails
- Correspondence and confirmation of CCTV system
- Correspondence since the initial interim steps hearing
- Invoice confirmation of plastic glasses
- CV of proposed DPS

They are not indexed as it is anticipated that the Committee will be given a joint bundle with a singular index.

### **The mischief**

11. The Committee were of the view that they shared the concerns of the Police in that 3 of the licensing objectives had been undermined by evidence of the recent operation of the premises. This Review will consider any wider issues and the PLHs' response to them.
12. Crime and disorder was engaged, in particular, by two incidents on 3<sup>rd</sup> May and 10<sup>th</sup> May 2012. There is also evidence of the club being a target for thieves.
13. Protection of children from harm was engaged by evidence of underage customers and an irresistible inference that they had been drinking.

14. Public safety had been undermined by the acts/omissions by the DPS in response to the two incidents and issues concerning perceived overcrowding.
15. Inadequate CCTV coverage and Door staff not fulfilling expected standards of behaviour undermined all three licensing objectives. A failure to keep adequate records and contact the emergency services when appropriate had undermined the Licensing objectives too.
16. The schedule of incidents provided in support of the Application are commented on by the DPS at the time in an attached document.

### **The Police evidence**

17. The documents attached to these representations, in particular minutes of meetings and correspondence including that from third parties, show that, we submit, although there may be issues that need remedy the Committee are dealing with a proactive, sincere and responsible PLH.
18. ADC Yarwood opines that significant changes need to be made. This is an opinion he is entitled to hold, and we accept this.
19. His view that the failure by the DPS to act was 'disgraceful' and 'bordering on perverting the course of justice' is not, however, a balanced one. He holds this opinion without having undertaken investigation as to the reasons or motives behind the failure. No staff have been interviewed or had statements taken from them in relation to the investigation of either of the incidents even though it is some 7 weeks since they occurred. Without investigation such conclusions or opinions are, we submit premature and of little or no weight for the purposes of this hearing.

20. Nathan Towersey, the DPS, made it quite clear to the Committee as to the reasons for his failure to call the Police or Ambulance. Attached are his comments in detail. He made a mistake, it was a serious error of judgement. It is capable of remedy so as to ensure it is not repeated. The PLH, however, are of the view that in order to uphold the licensing objectives Mr Towersey can no longer remain as DPS.

21. The chronology outlines numerous incidents, some minor others that need proper consideration as to how they impact upon the licensing objectives and what can be done to prevent them from reoccurring.

### **The issues**

22. Although it is tempting to apportion blame we submit that the appropriate way of considering the evidence is to do so only in so far as to assess how the licensing objectives have been undermined (as we agree above), and consider if the Code of Practice and any conditions that can be added to the licence adequately deals with the issues raised? It is only in this way that the Committee can ensure that its decision is proportionate and necessary (albeit in so far as conditions are imposed appropriate). These proceedings are not punitive. Nor should can any decision be lawfully so.

### **The remedy**

23. We submit that there is action that can and should be taken in order to uphold the licensing objectives. Some action can only be taken by the Committee by way of removal of DPS and modification of conditions, other actions properly taken by the PLH. We submit that action falling short of further suspension or revocation is appropriate as the systems, personnel and changes are able to be implemented immediately.

- Removal of DPS and replacement with Clare Greensmith ( CV enclosed)

The failure to call the Police and the Ambulance Service is so serious as to make the present DPS untenable. Whatever the explanation, and accepting this as an error of judgement, the fact remains that the Police and the PLH (and no doubt the Committee) cannot have confidence in him to remain in post at this time. His failure to ensure that under age people were not being let in by door staff and served at the bar cannot be remedied by retraining alone. Only a new, experienced DPS can deal with this, Clare Greensmith will attend the hearing and be available to answer any questions the Committee may have of her.

- Wholesale upgrade of CCTV system

Failure to have a system that provides the best recordable and retrievable coverage can only be remedied by upgrade. This has been done. The Police have been invited to assess it. The CCTV system is now of the highest specification available in all aspects. Documentation is attached outlining this and importantly the steps that had been taken prior to this Review in order to ensure that the system was 'fit for purpose'. Mr Carpenter will attend the hearing to explain the specifications of the new system.

- Use of plastic glasses Wed; Thurs; Fri; Sat; Sun and on Bank Holidays.

Despite best efforts of all involved incidents will occur. By using plastic glasses throughout the premises after 11pm save as for in the Rooftop bar will eliminate violence from having more serious consequences. The Rooftop bar is a different type

of venue within a venue. Door staff will be permanently stationed at its entrance after 11pm to prevent glassware being taken to other parts of the premises

- Change of Door staff Company

Failings by the Door staff to prevent the entry of under age customers as well as concerns over the manner of their conduct have led to the PLH changing the Company employed to provide this service. Since the initial hearing a number of providers have been interviewed by the prospective DPS to ascertain the best candidate to provide the service and prevent the reoccurrence of the issues outlined by the Police, missed by the DPS but is acknowledged as unacceptable by the PLH. Further details will be given at hearing

- Enhancement and implementation of Code of Practice

Will be effective immediately, disciplinary sanction for non compliance. It details training, procedures, ethos for all staff and subcontractors. In particular it deals with capacity issues and relations with other bodies such as how to react to an incident taking place. It puts in place a number of policies that will apply to the premises. Formerly, Company policies had been inconsistently applied unbeknown to the PLH and by virtue of the issues that have arisen there can be no doubt that a total revamp was necessary. The document attached and the assorted policies to which it refers have been produced as of a result of the criticisms of the Police, the observations of the Committee and amongst other input, the review commissioned

independently by the PLH undertaken by Neil Stanlake. Mr Stanlake will be attending the hearing to comment upon the Code and assist the Committee.

- Under age sales.

If in the unlikely event the new proposed challenge 25 and Door staff allow under age people on the premises the Company has reconfigured its tills to have a further check of age at point of sale.

- Thefts

All will be reported through the '101' system or nitenet if appropriate 999 will be called. Previous history shows that certain areas have been targeted. In particular an area near the DJ booth on the first floor has been identified. This has now been cordoned off, signage improved throughout the premises and a cloakroom facility has been established on the premises.

- Structural /capacity issues

Changes as of a result of the issue of petty theft are outlined above. In addition the Committee will note the changes to the monitoring of capacity that are outlined in the Code. The Police referred to an issue of 'pinch point' on the first floor. This has been rectified with stairs altered to create a better thoroughfare and easier access and egress. A balustrade has been built to add to the earlier changes made after discussions with the Police. A complete fire risk assessment was conducted prior to the Review to deal with amongst other issues capacity. This has been reported upon and confirmation of the same is within the documents attached.



David Campbell

Barrister

Kitsons LLP

15<sup>th</sup> June 2012.



15 June 2012

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Dear Mandy

### Licensing Act 2003

**S 53 (C ) Review following an Expedited/Summary Review of Premises Licence**  
**Re: PL0652 – Mambo/The Beach Hut 7 The Strand Torquay Devon TQ1 2AA**

I write following receipt of the representations/documentation received at 16.22hrs today in respect of the above hearing and thank you for your prompt dissemination of the same.

In particular, I refer to the Public Protection representations submitted by Gareth Fudge, Senior Environmental Health Officer, to which I have had no previous indication of in respect of this matter.

We have, however, been in pro-active dialogue and activity with both Mr Fudge and Mr Steve Cox, Environmental Health Manager (Commercial), regarding any and all issues raised in respect of any of our numerous business premises in Torquay, including seeking independent expert advice where appropriate. This dialogue is ongoing and indeed I was told, yesterday, by a representative of the Council that after the hearing scheduled next Friday we would continue to seek an acceptable solution to all concerns, due in part to the fact that no one premises was worthy of being singled out.

Unfortunately, at the point of receiving Mr Fudge's representations, I do not have access to documents which I would rely upon in our defence of and/or to demonstrate our pro-active engagement in the issues Mr Fudge refers to. Unfortunately the representations of Mr Fudge are incomplete and do not portray an accurate picture of the present situation.

Therefore, I would respectfully ask the Committee for the opportunity to present evidence of correspondence and communications to ensure that the Committee has the complete set of documentation and notes of the dialogue in relation to this aspect of the review.



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VAT No. 997 3158 64 | Company Registration No. 07150523 (England)

I anticipate that I shall be able to provide documentation prior to Friday and trust that you will allow me and my legal representative to amplify matters orally at the hearing

Yours faithfully

*Kind regards*

*Julie Eyre*  
Director

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