



Wednesday, 22 July 2015

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 30 July 2015

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Barnby

Councillor Doggett

Councillor Tolchard

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

Kay Heywood, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026

Email: governance.support@torbay.gov.uk

www.torbay.gov.uk

LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Minutes** (Pages 1 - 2)
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 16 July 2015.
4. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Licensing Act 2003 – An application for a Variation to a Premises Licence to Specify an Individual as the Premises Supervisor of O Pescador, 12 Victoria Parade, Torquay TQ1 2BB** (Pages 3 - 7)
To consider an application for a Variation to a Premises Licence to Specify an Individual as the Premises Supervisor of O Pescador, 12 Victoria Parade, Torquay TQ1 2BB.



Minutes of the Licensing Sub-Committee

16 July 2015

-: Present :-

Councillors Manning, Brooks and Lang

13. Election of Chairman/woman

Councillor Manning was elected as Chairman for the meeting.

14. Taxi Driver Report

Members considered a report concerning an application for a Torbay Council Driver's Licence, where the Applicant does not meet the Torbay Council's Hackney Carriage & Private Hire Licensing Policy requirements and considered whether the Applicant is a 'fit and proper person' to hold a Torbay Council Driver's Licence.

At the hearing Members of the Licensing Sub-Committee heard submissions from the Senior Licensing Officer.

Members heard that the Applicant had completed and submitted an application stating that he had a conviction for two offences under the Fraud Act 2006, relating to 'making false representation to make gain for self or other' which were committed on the 25 October 2010.

The Senior Licensing Officer advised Members that after a Disclosure and Barring Service check, the actual date of conviction for these two offences was 21 June 2013.

Members were advised that according to Policy, the conviction falls into the category of dishonesty which states that 'in normal circumstances any driver would have to remain free from conviction for a period of three years.' Therefore, the date for granting an application in line with the Policy would be 21 June 2016.

The Applicant submitted his case to members and answered questions put to him.

Decision:

That an application for a Torbay Council issued Drivers Licence be refused.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members resolved to refuse the application given that they were unable to find any specific reasons given by the Applicant which would allow them to depart from Policy.

Chairman



Briefing Report
No:

Public Agenda Item: **No**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence to Specify an Individual as the Premises Supervisor of O Pescador, 12 Victoria Parade, Torquay TQ1 2BB

Wards Affected: **Tormohun**

To: **Licensing Sub - Committee** On: **30th July 2015**

Contact Officer: **Mandy Guy**
Telephone: **01803 208293**
E.mail: **Licensing@torbay.gov.uk**

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premises detailed above. The application relates to a Variation to a Premises Licence to Specify an Individual as the Premises Supervisor in respect of which a notice has been received from the Chief Officer of Police, stating that the Crime Prevention Objective would be undermined if the application is granted.
- 1.2 The Sub Committee must consider the effects of the application against all the Corporate Priorities within the Community Plan.
- 1.3 The matter must be considered on its merits having received details of the issues arising either at a hearing or by written Representation if all parties have agreed that a hearing is not necessary. A decision must be made either:-
 - (a) to grant the application or,
 - (b) having regard to the notice, reject the application if it is considered that it is necessary for the promotion of the crime prevention objective to do so.
- 1.4 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant, the proposed Premises Supervisor and the Police on determination of the matter.
- 1.5 Where a Premises Licence has been issued under the Act to permit regulated activities to be provided at any Premises, one of which is the supply of alcohol, it is necessary for the holder of the Licence to also designate a Premises Supervisor. This can be the holder of the Licence or another person. In the latter case, the individual concerned must consent to the application being made.

1.6 This application includes a request that the Variation applied for should take immediate effect.

2. Introduction

2.1 An application has been made under Section 37 of the Act for a Variation to a Premises Licence to Specify an individual as the Premises Supervisor at the Premises detailed above. Details of the application are shown in Appendix 1.

2.2 The Council as Licensing Authority, is satisfied that the Applicant has met the administrative requirements of Section 37(4) but is unable to grant the application as a Notice has been received from the Chief Officer of Police stating that exceptional circumstances are such that granting the application would undermine the Crime Prevention Objective. The Authority is also satisfied that such Notice has been received within the appropriate timescale and has not been subsequently withdrawn. Details of the Notice are shown in Appendix 2.

2.3 The Authority is required to conduct a hearing by the provisions of Section 39(3) unless all parties agree that this is not necessary.

2.4 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representation and the procedure to be followed at the hearing.

2.5 If the application is refused, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the applicant.

2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 5(2) of Schedule 5 to The Chief Officer of Police who had given an appropriate notice which was not withdrawn.

2.7 Following such Appeal, the Magistrates' court may:-

(a) dismiss the appeal,

(b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or

(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

(d) and may make such order as to costs as it thinks fit.

Frances Hughes
Executive Head Community Safety

Appendices

Appendix 1 A copy of the Application form.

Appendix 2 Details of the Representation received from the Police.

If the above appendices are not attached to this report, they can be viewed at Connections Offices in Torquay, Paignton and Brixham and Torquay, Paignton, Churston and Brixham Libraries. Copies can also be obtained from the Democratic Services Office, Town Hall, Torquay.

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2011.

Agenda Item 6

Appendix 1



Devon & Cornwall Police

Building safer communities together

Licensing Department
Torbay Council
C/O Torquay Town Hall
Castle Circus
TORQUAY
TQ1 3DR

Licensing Department East
Devon and Cornwall Constabulary
Force Headquarters
EXETER
EX2 7HQ

Telephone: 01803 218900

1 July 2015

Dear Sir/Madam

Application to Vary the Designated Premises Supervisor in respect of O'Pescador, 12-14 Victoria Parade, Torquay, Devon

I refer to an application to Vary the DPS of the above named premises into the name of Mr Eduardo Gomes.

Devon and Cornwall Police wish to object to the variation of the licence to specify Mr Gomes as the Designated Premises Supervisor, on the basis that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective.

A check of the Police National Computer in respect of Mr Gomes has revealed the following:

On 7 July 2006 Mr Gomes appeared at Camberwell Green Magistrates Court where he was convicted of driving a motor vehicle with excess alcohol, for which he was found guilty. As a result of this he was fined £250, disqualified from driving for 18 months and his driving licence was endorsed. The rehabilitation period for this conviction is 5 years and therefore this conviction was deemed spent on 7 July 2011.

On 17 July 2012 Mr Gomes appeared at South London Magistrates Court charged with an offence of driving a motor vehicle with excess alcohol and was found guilty of this offence. As a result of this conviction Mr Gomes was fined £250, disqualified from driving for 36 months and his driving licence was endorsed to this effect.

The rehabilitation period in respect of this conviction is 5 years and the matter will not

licensingeast@devonandcornwall.pnn.police.uk



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be spent until 17 July 2017.

In light of the fact that Mr Gomes has a current conviction for driving a motor vehicle with excess alcohol and a spent conviction for the same offence, the police consider that Mr Gomes is not suitable to have responsibility for a licensed premises where a responsible attitude towards alcohol sale/consumption and compliance of the Licensing Act is paramount to ensure a premises does not impact on the any of the licensing objectives.

Should you require any further information or assistance, please do not hesitate to contact my Licensing Officer, Mrs Julie Smart, on telephone number 01803 218900.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'G Mayhew', with a horizontal line underneath.

G Mayhew – Superintendent
LPA Commander – South Devon