

Licensing Act Sub-Committee - Record of Hearing held on Wednesday 28 March 2012 at 6.00pm

MEMBERS: Councillor THOMPSON (Chairman); Councillors MURRAY and LIDDIARD.

1 Declarations of Interest.

None were received.

2 Application for New Premises Licence – Havana Bar.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Licensing Manager outlined the report regarding the application for a new premises licence for the Havana Bar, 10 Mark Lane.

The premises was located in the Cumulative Impact Zone. This was defined as when a significant number of licensed premises are concentrated in an area. When an area becomes saturated, it creates exceptional problems that undermine the promotion of one or more of the licensing objectives. When valid representations are received, the Cumulative Impact Policy creates a rebuttable presumption that the application is refused.

The Cumulative Impact Policy clearly states that license applications in the Impact Zone should be refused, unless Members of the Sub-Committee are satisfied that the applicant had provided evidence to show that the premises would not exacerbate existing issues in the Zone or undermine the promotion of the Licensing Objectives.

The Sub-Committee was advised that Sussex Police had made representations objecting to the application, specifically in relation to the Cumulative Impact Policy and the prevention of crime and disorder Licensing Objective.

No other representations had been made however the Licensing Manager informed the Committee that if the licence was granted, conditions pertaining to the installation of a sound limiting device would need to be formalised.

Mr Hall, representing Mr Daramola, the applicant, clarified to the Sub-Committee that this application was for a wine bar and not a nightclub as had been suggested by Sussex Police.

Mrs Cathy Wolfe, Licensing Officer, Sussex Police addressed the Sub-Committee and reiterated their stance of opposing the application. It was felt that the premises would not promote the licensing objections in particular the prevention of crime and disorder and the prevention of public nuisance. Instead it would give rise to potential negative cumulative impact as a result of an increase in public nuisance and crime and disorder.

Mrs Wolfe raised concerns that contrary to the applicant stating it was a wine bar, the proposed entertainment activities attached to the application were not

too dissimilar to nightclubs currently in the Borough. Another premises inside the Cumulative Impact Zone would require more robust policing and disturb the current evening state of the Borough.

It was acknowledged that the applicant was prepared to accept a condition that would restrict the number of customers standing up at any one time however Sussex Police believe that this would be extremely difficult to enforce and could generate crime and disorder.

It was also a concern in the application that in the promotion of the licensing objectives section, there was no mention of policies relating to the use of glass, drugs and weapons, a maximum occupancy number, regular checks of the toilet facilities or the provision of SIA registered door staff. Sussex Police had attached conditions to the license; appended to the report for the Sub-Committee's consideration should they approve the application.

Councillor Liddiard asked Mrs Wolfe what distinguished wine bars from nightclubs. Mrs Wolfe stated that it was unusual for wine bars to apply for activities such as the performance of dance.

Councillor Murray made reference the condition suggested by Sussex Police relating to the provision of polycarbonate glasses. The Licensing Manager informed the Sub-Committee that the use of polycarbonate glasses was standard practise in the Borough.

Mr Daramola responded to Sussex Police's concern relating to the proposed activities not being dissimilar to that of nightclubs in the Borough. He stated there was not enough evidence to suggest that it would be a nightclub and made reference to Mr Hall's letter that was appended to the report.

Mr Hall then addressed the Sub-Committee outlining Mr Daramola's previous history as a licensee holder. He then elaborated on Mr Daramola's response to Sussex Police's nightclub concern. Mr Hall stated that the application had not been dressed up as a nightclub indicated by the 5pm opening times where as nightclubs in the Borough generally opened at 9/10pm. The application would create an entertainment venue suitable for the public and private booking customers, to enjoy social activities and strenuously does not wish to be identified in theory or practise as a nightclub.

He advised the Sub-Committee that Mr Daramola had looked at the provision of hot food however the design of the premises made it impossible to have a kitchen or waiter. Tapas food would be made available to members of the public. Mr Hall also referenced other premises in the Borough that offered similar activities that had been approved by the Council due to not being inside the Cumulative Impact Zone.

Mr Hall detailed Mr Daramola's response to the conditions proposed by Sussex Police that were appended to the report. Mr Daramola had agreed with the majority of the conditions including the provision of polycarbonate glasses but disagreed with a couple. It was felt that the requirement for four door supervisors to control 200 people was totally disproportionate to the style of the venue and capacity. Mr Daramola also strongly disagreed with the Police's suggested restriction to the sale of alcohol being terminated at 00.00 hours on Friday and Saturday as it would disrupt his whole business plan of running the wine bar until closing time.

Mr Hall stated that the applicant's operating schedule was practical and enforceable and would promote the 4 licensing objectives. Mr Hall reminded the Sub-Committee that should the application be granted, the license would be open to review and refusal should Mr Daramola not promote the Licensing Objectives.

The Licensing Manager asked Mr Daramola, why a vertical limit had been proposed. Mr Daramola responded that should stag/hen parties come into the bar, it would be extremely difficult to enforce so allowances needed to be made however he had agreed to restrict the number of people standing up at one time to avoid being labelled a vertical drinking establishment.

When asked how he would promote the 4 licensing objectives notably the prevention of crime and disorder and prevention of public nuisance, Mr Daramola explained that the door supervisors would be able to control the people coming in and out of the premises ensuring that the number of people entering the premises would not exceed 200. There would also be no alcopops or products of a similar nature being sold on the premises so that would a certain target audience that look for premises that sell cheaper drinks. CCTV had also been agreed to be installed to help monitor the premises.

Mr Daramola then clarified to the Sub-Committee that while the restaurant and the bar were separate parts of the premises members of the public would be able to move from one section to the other.

Councillor Liddiard questioned Mr Daramola over how he would maintain cleanliness and lighting issues both inside and outside the premises. He responded that the outside of the premises would be cleaned every night following closure. Infra red lenses would address the poor visibility issues inside and lighting would be installed outside the premises.

Councillor Murray remained concerned that there was still no difference between the proposed establishment and that of other nightclubs in the Borough.

Following all the evidence presented to the Sub-Committee, Mrs Wolfe reiterated that Sussex Police remained opposed to the proposal and recommended refusal.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives and the Council's Statement of Licensing Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: That the new premises application in respect of the Havana Bar, 10 Mark Lane be granted as set out in the attached appendix.

The meeting closed at 8.26 p.m.

**M Thompson
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Wednesday 28 March 2012

Premises Licence Holder:
Premises: Mr S Daramola
Havana Bar
10 Mark Lane
Eastbourne

Reasons for Hearing: Relevant representations received from responsible authorities under the public safety and prevention of crime and disorder licensing objectives arising from the Council's Cumulative Impact Policy.

Parties in attendance: Applicant: Mr S Daramola and Mr B Hall (Licensing Consultant)
Interested Parties:
Mrs Cathy Wolfe (Licensing Officer, Sussex Police)
Licensing Authority:
Miss K Plympton (Licensing Manager), Mr J Virgo (Licensing Officer) and Mr A Couper (Locum Lawyer).

Decision made: To grant the new Premises Licence as follows:

Supply of Alcohol (on the premises only)

Thursday – Saturday	17:00 hours – 01:00 hours
Sunday	17:00 hours – 21:30 hours

Regulated Entertainment (Indoors only):

Live Music/Recorded Music/Provision of facilities for making music/Provision for facilities for dancing/Performance of Dance

Thursday – Saturday	17:00 hours – 01:00 hours
Sunday	17:00 hours – 22:00 hours

Open to the Public

Thursday – Saturday	17:00 hours – 01:30 hours
Sunday	17:00 hours – 22:00 hours

Subject to the following conditions:

- iii) The Designated Premises Supervisor or their nominated representative shall ensure that at all times when the premises are open for any licensable activity there is competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for the

prevention of crime and disorder licensing objective.

- iv) A suitable CCTV system be designed, installed and maintained in proper working order to the satisfaction of the Licensing Authority and Sussex Police. Such a system shall:
- ensure coverage of all entrances and exits to the licensed premises internally and externally;
 - provide continuous recording facilities for each camera to a standard that provides images clear enough for identification purposes;
 - such images shall be retained for a minimum of 31 days and shall be made available to the Licensing Authority or police officer on request.
 - be in operation at all times when the premises are open to the public.
 - Sufficient members of staff are trained in the use of the CCTV system and in particular in the provision of images when requested.
- v) Two SIA registered door supervisors shall be employed at the premises from 17:00 hours to 20:00 hours, Thursday to Sunday. Four SIA registered door supervisors shall be employed at the premises from 20:00 hours until 30 minutes after closing time, Thursday to Sunday.
- vi) An appropriate search policy will be agreed and implemented following liaison with Sussex Police.
- vii) An incident book will be kept and maintained at the premises in which:
- a. door staff will register their name and SIA badge number prior to the commencement of their duty and
 - b. record all incidents taking place on the premises including any seizures of drugs and/or weapons. This incident book will be made available to police or other authorised officer on request.
- viii) A secure deposit box is kept on the premises for the retention of confiscated items and the DPS shall advise Police with regard to items contained therein that require disposal.
- ix) Where glass bottles are used, they will be retained or disposed of on the premises.
- x) No customers will be admitted, or permitted to leave when carrying open or sealed bottles or glasses.
- xi) All bottles and glasses will be removed from public areas as soon as they are finished with or empty.
- xii) The maximum occupancy of the licensed premises shall be restricted to 200 persons at any one time including staff and performers such as a DJ.
- xiii) The provision of polycarbonate glasses will be implemented in liaison with Sussex Police following a risk

assessment for occasions such as Airborne.

- xiv) The Premises License Holder/ Designated Premises Supervisor will support the use of an ION Trak Machine set up within the premises from time to time as decided by Sussex Police.
- xv) The Premises License Holder/ Designated Premises Supervisor will join Nightwatch and nominate an employee to attend the Nightwatch meetings or attend themselves. This is to include the acquisition/hire of a Nightwatch radio to enable the bar and door staff to remain in contact with all the other pubs and clubs around them.
- xiv) All forms of music played in the premises shall be put through a noise limiter device, set at a level agreed with the Licensee and the Environmental Health Manager (or nominee), Eastbourne Borough Council.

Reasons for Decision: The Sub-Committee has granted the application for a Premises Licence subject to the conditions specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003, the licensing objectives and the Council's Statement of Licensing Policy.

The Sub-Committee has weighed up the applicant's submissions alongside the representations made by the responsible authorities (Sussex Police) with particular regard to the Cumulative Impact Policy and the promotion of the Crime and Disorder Licensing Objective. On balance it was considered that the applicant had provided sufficient evidence to rebut the presumption against granting of the application arising from the Council's Cumulative Impact Policy.

The additional conditions to the licence proposed by Sussex Police, the majority of which had been accepted by the applicant, were agreed as necessary to promote the licensing objectives.

Date of Decision: 28 March 2012

Date decision notice issued: 11 April 2012

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act.
If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.