

Body: Licensing Sub Committee
Date: 28th March 2012
Subject: Application For a New Premises Licence, Havana Bar, 10 Mark Lane, Eastbourne.
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Devonshire Ward
Purpose To determine an application for a new premises licence under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council's, Licensing Team, for the premises to be known as Havana Bar, located at 10 Mark Lane, Eastbourne.
- 1.2 The premise is currently closed but was previously licensed as Co Cos Nightclub, whose premises licence issued under the Licensing Act 2003 lapsed following the previous holding Company going into administration in May 2011, albeit the site ceased trading in 2010 following issues with its management.

2.0 The Application

- 2.1 An application for grant of a new premises licence under the Licensing Act 2003 has been sought for the following activities:

Section E – Live Music (Indoors only)

17:00 – 0100 hours Thursday – Saturday
17:00 – 23:00 hours Sunday

Section F – Recorded Music (Indoors only)

17:00 – 01:00 hours Thursday – Saturday
17.00 – 23:00 hours Sunday

Section G Performances of Dance (Indoors only)

17:00 – 01:00 hours Monday – Saturday
17.00 – 23:00 hours Sunday

Section I Provision of facilities for making music (Indoors only)

17:00 – 01:00 hours Thursday – Saturday
17.00 – 23:00 hours Sunday

Section J Provision for facilities for dancing (Indoors only)

17:00 – 01:00 hours Thursday – Saturday
17.00 – 23:00 hours Sunday

Section M – Supply of Alcohol (On the Premises only)

17:00 – 01:00 hours Thursday – Saturday
17.00 – 23:00 hours Sunday

Section O – Open to the Public

17:00 – 01:30 hours Thursday – Saturday
17.00 – 23:30 hours Sunday

3.0 Licensing Objectives

- 3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe the steps; they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003.
- 3.2 The Operating Schedule detailing these steps can be found at Section P of the application form, included at Appendix 1.
- 3.3 A layout plan of the premises is included at Appendix 2.

4.0 Consultation Process

- 4.1 The Licensing Act 2003 requires applicants to advertise both on the premises and in a local newspaper in order to inform the public of the application. A number of “Responsible Authorities” have also been consulted as part of the process, allowing a consultation period of 28 days for representations to be made. In this instance, as a result of the consultation process, Sussex Police have made representations, specifically in relation to the Cumulative Impact Policy and the prevention of crime and disorder Licensing Objective. This is detailed at Section 7 of the report.

5.0 The Decision Making Process The Licensing Objectives

- 5.1 In their decision making, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight as part of the process. The Licensing Objectives are:

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

6.0 Eastbourne Borough Council's Statement Of Licensing Policy 2011 - 2014

- 6.1 Copies of the Council's Statement Of Licensing Policy 2011 -2014 have previously been circulated to Members. A copy is also retained in the Members Room or can be downloaded from www.eastbourne.gov.uk/licensing.
- 6.2 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Statement Of Licensing Policy and , Section 182 Guidance issued by the Department of Culture, Media and Sport, revised in October 2010, and must act to promote of the 4 Licensing Objectives.
- 6.3 Eastbourne Borough Council's Statement Of Licensing Policy 2011 - 2014 outlines the matters the Authority will consider when determining matters under the Licensing Act 2003. Of particular relevance in this case is the Cumulative Impact Policy.

7.0 Cumulative Impact

- 7.1 The premises in question is located in the Cumulative Impact Zone. It is recognised that the impact of the number, type and density of licensed premises in a given area may lead to problems of noise, nuisance, crime and disorder outside of, or a distance from licensed premises.
- 7.2 Cumulative Impact is defined as the "potential impact upon the Licensing Objectives of a significant number of licensed premises concentrated in an area," and is a proper matter for consideration by the Licensing Authority.
- 7.3 The Licensing Authority may receive representations from a Responsible Authority or 'interested party' that the cumulative effect of licences is leading to an area becoming saturated. This creates exceptional problems of disorder and nuisance, over and above the impact from individual premises which undermines the promotion of one or more of the licensing objectives.
- 7.4 Where valid representations are received, the Cumulative Impact Policy creates a rebuttable presumption that the application will be refused.
- 7.5 It is for the applicant to address the Cumulative Impact Policy and produce evidence to demonstrate that the matter:
- (a) Will not add to the cumulative impact caused by licensed premises and challenges already been experienced in the area;
 - (b) Will not undermine the promotion of the Licensing Objectives.

- 7.6 The Cumulative Impact Policy clearly states that licence applications in the Zone should be refused, unless Members are satisfied that the applicant has provided evidence to show that premises will not exacerbate existing issues in the locality, or undermine the promotion of the Licensing Objectives.
- 7.7 The full Cumulative Impact Policy can be found within the Council's Statement of Licensing Policy. 2011 – 2014. Copies are available at www.eastbourne.gov.uk/licensing, in the Members Room and will be provided at the hearing.

8.0 The Licensing Objectives

8.1 Public Safety

The Statement of Licensing Policy states that the Operating Schedule should include steps to ensure the physical safety of patrons. This might include the imposition of conditions regarding capacity and mechanisms to promote responsible drinking. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

8.2 Prevention of Public Nuisance

The Statement Of Licensing Policy states that within the Operating Schedule, applicants will be required to demonstrate how they intend to prevent nuisance arising, disturbance occurring and mechanisms to protect amenities in the vicinity of the premises. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

8.3 Protection of children from harm

The Statement Of Licensing Policy requires that the Operating Schedule must specify the measures and management controls in place to protect children from harm. Conditions can be placed to restrict access to children from accessing the premises during certain times or when certain licensable activities are taking place. The restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

8.4 Prevention of Crime and Disorder

The Statement Of Licensing Policy states that the Operating Schedule should include steps to ensure the deterrence and prevention of crime and disorder on and in the vicinity of premises. The restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

9.0 Representations

9.1 A copy of the representation received by the Police is included at Appendix 3, however a summary appears below.

Interested Parties

- No representations have been received.

Representations from Responsible Authorities

- **Sussex Police** – Sussex Police have lodged a representation under the prevention of crime and disorder Licensing Objective. They hi-light the presence of the Cumulative Impact Policy, along side what they consider to be an insufficient Operating Schedule., Sussex Police ask that the application is refused in light of this.

However, if Members decide to grant the application, Sussex Police would like to further address Members on the imposition of a series of conditions

Sussex Police have made it clear that this in no way undermines their representation seeking a refusal of the licence.

Suggested conditions are detailed within the original representation letter, dated 14th February 2012, located at Appendix 3 of the report.

- **Eastbourne Borough Council Environmental Health Department** - No representations have been received, however, if a licence is granted, conditions pertaining to the installation of a sound limiting device will need to be formalised as part of the sub Committee decision.
- **East Sussex Fire and Rescue Service** – No representations have been received.
- **Eastbourne Borough Council Health and Safety Department** – No representations have been received.
- **Eastbourne Borough Council Planning Department** No formal representation has been received, however they ask for the following factual information to be made available to the Sub Committee.

“Despite the covering letter from the agent stipulating that the premises would not be a night club, Development Control is of the opinion that the proposed layout and operation described in the application would result in the operation of the premises as a nightclub. Planning permission would be required to operate

a nightclub from the premises.

Furthermore, the proposed days for which licensing is sought would not comply with the current permission for the premises. Condition 5 of permission EB/2003/0119 stipulates that:

That the use hereby authorised shall only take place between the hours of 9.00 am and 1.30 am on Thursdays, Fridays and Saturdays.”

- **Area Child Protection Team**– No representations have been received.
- **Trading Standards, East Sussex County Council** – No representations have been received.

9.2 A series of communications have taken place between Sussex Police and the applicants Agent, Mr Bernard Hall. Whilst Sussex Police ask the Sub Committee to refuse the application in its entirety, as detailed above, they have also addressed Members on the imposition of conditions if Members are minded to grant the application. These are detailed in letter dated 14th February 2012, and included at Appendix 3. Mr Hall has responded to the suggestion of such conditions, and his views on the matter can be found at Appendix 4.

9.3 If the Sub Committee are satisfied that the applicant has adequately addressed the Cumulative Impact Policy and has taken steps to promote the Licensing Objectives, then Members may choose set aside the Policy and grant the application.

9.4 Members may consider any other matters which may negatively impact upon the locality and Licensing Objectives, and may impose reasonable, proportionate and enforceable conditions as considered appropriate.

9.5 The applicant, “interested parties” and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

10.0 Options Open To The Sub Committee

10.1 The Licensing Sub Committee must have regard to the following:

- Eastbourne’s Statement of Licensing Policy 2011-2014, with particular regard to the Cumulative Impact Policy, which creates a presumption to refuse applications unless the applicant can provide evidence to the contrary.
- Statutory Guidance as amended in October 2010, under Section 182 of the Licensing Act 2003.
- Representations from the proposed Premises Licence Holder and/or the Designated Premises Supervisor

- Representations from any Responsible Authority
- Representations from “interested parties,” these being persons who live in the vicinity of the premises or who operate a business in the vicinity.
- Other information as considered appropriate.

10.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:

- Grant the application in full as requested
- Grant the application but modify it:
 - by altering hours or activities;
 - adding conditions as necessary, or
 - Omit parts as considered necessary for the promotion of the Licensing Objectives.
- Reject all or part of the application.

11.0 Legal Considerations

11.1 The framework for the issue, variation and/or modification to applications is made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act, amended in January 2010. This Guidance is provided in order to assist the Council in carrying out functions under the Act.

11.2 Furthermore, the Licensing Sub Committee must have regard for the Eastbourne Borough Council’s Statement of Licensing Policy 2011-2014, particularly the Cumulative Impact Policy.

12.0 Human Rights

12.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act, 2003.

12.2 Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property. However, in this instance, a licence is yet to be obtained.

12.3 Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right.

12.4 Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory.

13.0 Right of Appeal

13.1 An applicant and/or a person making a representation, be it a Responsible Authority or "interested party" has a right of appeal to the decision taken by the Licensing Authority. These provisions are detailed in Schedule 4 of the Licensing Act 2003.

14.0 Background Material

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (January 2010)
- Hearing and Regulations, Licensing Act 2003-2005
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998