

Body: Licensing Act Sub Committee
Date: 11th July 2012
Subject: Application For a New Premises Licence, The Beach Deck, Treasure Island, Royal Parade, Eastbourne
Report Of: Jay Virgo, 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 a premises licence under the Licensing Act 2003 for The Beach Deck, Treasure Island, Royal Parade, Eastbourne.
- 1.2 The area is currently described as located on the promenade and sits above the adventure park facing the sea. Access to the café/restaurant is from the promenade only and has separate access from Treasure Island Park. The intended use is for a restaurant/café with seating for approximately 100 patrons inside and 100 outside on the decked area. The restaurant/café would be open for breakfast/brunch/lunch and dinner 7 days per week.

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 F - Recorded Music Indoors & Outdoors

Section M – Supply of Alcohol on the Premises

- 2.2 The applicant has sought that the premises be open to the public from 08:00 hours to 23:30 seven days per week. That recorded music be licensed from 08:00 to 23:00 hours seven days per week and that the supply alcohol be made available from 12:00 hours to 23:00 hours seven days per week.

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. These are:

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

3.2 The Operating Schedule detailing the steps the applicant intends to take to promote these can be found at Section P of the application form, included at Appendix 1.

3.3 In making any decision, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight.

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

4.1 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.

4.2 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 of the Guidance issued by the Department of Culture, Media and Sport, revised on the 25th April 2012, and must act to promote the 4 Licensing Objectives.

4.3 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. This Policy offers a framework for decisions, however, Members may choose to depart from it, offering reasons for doing so.

5.0 Overview of the Councils Statement of Licensing Policy 2011 - 2014

5.1 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.

5.2 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.

5.3 **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.

5.4 **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.

6.0 **Consultation Process**

- 6.1 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 respect of the application submitted on the 24th May 2012 the Licensing Team confirm that all of the statutory requirements have been met.
- 6.2 As a result of the consultation process, a series of representations have been made against the application. These are detailed more fully in Section 7 of the report.

7.0 **Representations**

- 7.1 A copy of all representations received are included at Appendix 2. An overview appears below.

Representations from individuals in the community
<ul style="list-style-type: none">• 3 representations have been received, under all 4 of the Licensing Objectives. 2 of these representations have subsequently been withdrawn.
Representations from Ward Councillors
<ul style="list-style-type: none">• There were no representations received from Ward Councillors.
Representations from Responsible Authorities
<ul style="list-style-type: none">• Sussex Police – Representation has been received from Sussex Police.

- **Eastbourne Borough Council Health and Environmental (Noise) Department -**
Representation has been received from the Noise Team.
- **Eastbourne Borough Council Licensing Authority**
– No representations have been received.
- **Eastbourne Primary Health Care Trust** – No representations have been received.
- **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 representations have been received.
- **Area Child Protection Team**– No representations have been received.
- **Trading Standards, East Sussex County Council** – No representations have been received.

7.2 Following representation received from Sussex Police and EBC Noise team the applicant was advised of a suggested set of conditions that could be applied to the premises licence if granted.

7.3 The applicant agreed to the following conditions and hence Sussex Police and EBC noise Team have subsequently withdrew their representations.

"Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to their meal."

"Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals provided on the premises"

"Any amplified music or speech at the premises should be at a background level, this being that people in the premises can talk to each other without raising their voices. Amplified Music or speech should not be audible beyond the perimeter of the premises"

7.4 A series of concerns were raised by residents, including:

- The effective promotion of the Licensing Objectives, and potential for noise, nuisance, crime and disorder.
- The potential for anti social alcohol related behaviour.

- Health and safety concerns regarding the suitability of the site.
 - Litter and the likely wider disruption to the local community.
- 7.5 Following the conditions suggested by Sussex Police and EBC Noise team the applicant agreed to have these conditions applied to the grant of a licence.
- 7.6 The applicants consent to agree to the suggested conditions was subsequently relayed to individuals in the community that had made representation.
- 7.7 Two individuals in the community subsequently withdrew their representation as per appendix 2.
- 7.8 Following unsuccessful mediation one individual in the community wished for their representation to be upheld. This outstanding representation, lodged by Mr Stuart Lear, is included in appendix 2.

8.0 Options Open To The Sub Committee

- 8.1 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 necessary to promote the Licensing Objectives.
- 8.2 The Licensing Sub Committee must have regard to the following:
 - Eastbourne's Statement of Licensing Policy 2011-2014.
 - Statutory Guidance as amended on the 25th April 2012, 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 the local community and Ward Councillors.
 - Other information as considered appropriate.
- 8.3 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.

9.0 Legal Considerations

- 9.1 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.

- 9.2 Furthermore, the Licensing Sub Committee must have regard for the Eastbourne Borough Council's Statement of Licensing Policy 2011-2014.

10.0 Human Rights

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

11.0 Right of Appeal

- 11.1 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.

Background Material

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (January/October 2010 & April 2012)
- Hearing and Regulations, Licensing Act 2003-2005
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998