

**Report to:** Licensing Sub-Committee

**Date:** 11<sup>th</sup> May 2022

**Title:** Application for a new Premises Licence. The Rosy Lee, 379 Seaside, Eastbourne, BN22 7RP

**Report of:** Director of Service Delivery

**Ward(s):** Devonshire Ward

**Purpose of report:** To consider representations made against the new Premises Licence application under the Licensing Act 2003 and make a decision on the application.

**Officer recommendation(s):** To consider representations made against the new Premises Licence application under the Licensing Act 2003 and make a decision on the application.

**Reasons for recommendations:** Relevant representations made within consultation period

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## **1 Introduction**

- 1.1 Eastbourne Borough Council received an application for a new Premises Licence under the Licensing Act 2003 for The Rosy Lee, 379 Seaside, Eastbourne, BN22 7RP from Vu-AR Limited. The application is included along with the plan of the premises at **Appendix 1**.

## **2 The Application**

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

### **Sale by Retail of Alcohol (on and off the premises)**

Every Day 07:30 - 23:00

## 2.2 **Opening Hours**

Every Day 07:30 - 23:30

Due to a drinking up period mentioned in the licensing objectives the closing time has been pushed back 30 minutes to accommodate this.

## 2.3 **Seasonal Variations**

Christmas Eve and New Year's Eve to finish at 01:00hrs the following day.

## 2.4 **General Description**

The premises will be a café, bar, restaurant where alcohol will be made available to seated customers. The bar will be for dispensing only with no room for vertical drinking.

## 3 **Licensing Objectives**

- 3.1 When applying for a new premises licence under the Licensing Act 2003, the applicant is required to describe any steps they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The Operating Schedule detailing these steps can be seen in the application form. This is included at **Appendix 1**.

## 4 **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. The application details are also advertised on the council's website. Several "Responsible Authorities" have also been consulted as part of the process. There was a consultation period of 28 days, from the 14<sup>th</sup> March 2022 until midnight on the 11<sup>th</sup> April 2022, for representations to be made. The applicant conformed with all the requirements as laid out within The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.
- 4.2 During the consultation period there have been 2 representations, one valid which you are hearing this evening, and another invalid. This was invalid due to not being raised on the grounds of any of the 4 licensing objectives. The valid representation is included at **Appendix 2**.

## 5 **The Decision Making Process - The Licensing Objectives**

### Public Nuisance

- 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

5.2 A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a likely effect of a grant (i.e., more probable than not).

## **6 Eastbourne Borough Council's Statement of Licensing Policy & Section 182 Guidance**

6.1 Copies of the Council's Statement of Licensing Policy have previously been circulated to Members. A copy is also retained in the Members' Room.

6.2 Whilst each application will be considered on its merits, the Licensing Sub-Committee will act to promote the four licensing objectives and have due regard to:

- Eastbourne Borough Council's Statement of Licensing Policy 2019 - 2024.
- Section 182 Guidance issued by the Home Office.

6.3 Eastbourne Borough Council's Statement of Licensing Policy outlines the matters that the Authority will consider when determining matters under the Licensing Act 2003. An overview appears below.

### Prevention of Public Nuisance

6.4 The Licensing Authority will require operators to demonstrate how matters will be addressed to limit public nuisance, prevent disturbance and protect amenities.

6.5 In considering an application, the Licensing Authority will consider the adequacy of proposed measures to remove or effectively manage the potential for noise, nuisance and anti-social behaviour.

6.6 The Licensing Authority will take into consideration a range of issues, and consider the imposition as appropriate of conditions, including:

- The proximity of residential accommodation.
- The type of use proposed, including the likely numbers of customers, proposed hours of operation, nature of regulated entertainment and the frequency of activity.
- Steps taken or proposed to be taken to prevent noise, disturbance and vibration breaking out from the premises. This may include music, noise from ventilation equipment, and human voices.
- Steps taken to prevent disturbance by customers arriving at or leaving the premises will also need to be detailed. This will usually be of greater importance between 10.30 p.m. and 7 a.m. than at other times of the day.

- The steps taken or proposed to be taken by the applicant to prevent customers queuing. If queuing is inevitable, then queues should be diverted away from neighbouring premises and residential accommodation or be otherwise managed to prevent disturbance or obstruction.
- The steps taken to ensure staff and customers leave the premises quietly, including the provision of appropriate “leave quietly” signage.
- Arrangements made or proposed for parking by customers specific to the licensed premises where relevant, and the effect of parking by patrons on local residents.
- The provision for public transport in the locality, including taxis and private hire vehicles for customers to facilitate dispersal.
- The level of likely disturbance from associated vehicular movement.
- The delivery and collection areas and delivery/collection times.
- The siting of external lighting, including security lighting which may cause light pollution and/or disturbance to neighbouring properties.
- The impact on refuse storage and litter.
- The history of previous nuisance complaints proved against the premises; particularly where statutory notices have been served on the present premises licence operators.
- The history of the applicant in controlling anti-social behaviour and preventing nuisance.
- The generation of odour, e.g. from the preparation of food.
- Any other relevant activity likely to give rise to nuisance.
- Any representations made by the Responsible Authorities or other relevant agency/representative.
- The use and control of gardens and other open-air areas.

6.7 Such measures may include:

- Keeping windows and doors shut save for access and egress.
- The installation of soundproofing, air conditioning, acoustic lobbies, acoustic devices and sound limitation devices.
- Operators to undertake regular checks and assessments in the vicinity of the premises and take steps to limit disturbance and noise breakout.
- Limiting the number of patrons at any one time in any external areas, particularly where it is in close proximity to residential accommodation.

## 7 Representations

7.1 A copy of the representation is included at **Appendix 2**, however a summary appears below:

The representor believes that this premises being granted a premises licence to serve alcohol would directly affect them by exacerbating noise and antisocial behaviour they are already experiencing.

7.2 The applicant chose not to mediate this representation due to not being considered constructive.

7.3 Interested Parties - **One** representation has been received, this representation has made comments under Prevention of Public Nuisance

7.4 The following summarises whether representations have been received from responsible authorities:

- **Sussex Police** – No representation.
- **Eastbourne Borough Council (Specialist Advisor) Environmental Health** – No representation
- **Eastbourne Borough Council (Specialist Advisor) Health and Safety** – No representation.
- **Eastbourne Borough Council (Specialist Advisor) Planning** – No representation.
- **Eastbourne Borough Council (Specialist Advisor) Licensing** – No representation.
- **East Sussex Fire and Rescue Service** – No representation.
- **Area Child Protection Team** – No representations.
- **Trading Standards (East Sussex County Council)** – No representation.
- **Primary Care Trust** – No representation.

## **8 Options open to the Sub-Committee**

8.1 The Licensing Sub-Committee shall take the steps it considers appropriate for the promotion of the Licensing Objectives and may:

- Grant the Licence in the same terms as it was applied for.
- Grant the Licence but modify the conditions as appropriate for the promotion of the licencing objectives.
- Grant the Licence but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives.
- Reject the application.

8.2 The Sub-Committee are asked to note the procedures relating to this hearing which are contained in The Licensing Act 2003 (Hearing) Regulations 2005 as amended.

8.3 The Sub-Committee may also consider any other matters that may negatively impact upon the Licensing Objectives and exercise their powers to impose conditions, or take the appropriate action as they see fit, in order to promote the Licensing Objectives.

8.4 In determining what, if any, conditions should be attached to a licence, these should only be imposed where it is considered appropriate and proportionate on a case-by-case basis. The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives. The Sub-Committee may not impose any condition unless its discretion has been exercised following receipt of a relevant representation

and is satisfied that it is appropriate to promote one or more of the licensing objectives.

## **9 Financial appraisal**

- 9.1 There are no specific financial implications arising from this application as the cost of delivering the licensing function is fully covered by the Licensing fees.
- 9.2 A decision made by the Sub Committee may be appealed by any party to the proceedings to a Magistrates' Court. Costs associated with this matter and incurred by any party, may in certain circumstances be awarded against the Council. The impact of these additional costs (if any) will therefore need to be met from within existing revenue budgets.

## **10 Legal implications**

- 10.1 Under section 18 Licensing Act 2003 (as amended), following receipt of an application for a premises licence if relevant representations are received, unless all parties agree that a hearing is unnecessary, the Licensing Authority must hold a hearing. At the hearing the Sub Committee shall, having regard to the representation, take such steps as it considers appropriate for the promotion of the licensing objectives. The relevant options are outlined in para. 8.1 of this Report.
- 10.2 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the Licensing Act 2003. These include, but are not limited to, having due regard to the Equality Act 2020, the Human Rights Act 1998 and the Crime and Disorder Act 1998.
- 10.3 Under section 181 and Schedule 5 Licensing Act 2003 there is a right of appeal to the Magistrates' Court in respect of applications for new licences. This right of appeal is open both to the applicant and to any person who has made relevant representations. The appeal application must be made within 21 days of the written notification of the Sub Committee's decision to the appellant.
- 10.4 The Legal section considered this Report on 28 April 2022 (IKEN 10997- EBC-MW).

## **11 Risk management implications**

- 11.1 There are no risks associated with the content of this report.

## **12 Equality analysis**

- 12.1 An Equality Analysis is not constructive in this instance.

## **13 Environmental sustainability implications**

- 13.1 There are no sustainability and/or carbon reduction implications associated with this report.

## **14 Appendices**

- 14.1
- Appendix 1 - Application and plan for a new premises licence under the Licensing Act 2003.
  - Appendix 2 – Representation.

## **15 Background papers**

15.1 The background papers used in compiling this report were as follows:

- Section 182 Statutory Guidance to the Licensing Act 2003 available [here](#)
- Eastbourne Borough Council Licensing Statement 2019-2024 available [here](#)
- Human Rights Act 1998.
- Equality Act 2010.
- Crime and Disorder Act 1998.