

Body: Licensing Sub Committee
Date: 29th July 2015
Subject: Application for a review of the premises licence HJ Food Ltd trading as Ocean Gastronom, 9 Seaside Road, Eastbourne, BN21 3PR
Report Of: Danielle Ball, Specialist Advisor
Ward(s) Devonshire Ward
Purpose To determine an application for a Review of a premises licence under the Licensing Act 2003.
Contact: Danielle Ball 01323 415333. Danielle.ball@eastbourne.gov.uk

1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council as the Licensing Authority, for a Review to the premises at 9 Seaside Road, Eastbourne BN21 3PR.
- 1.2 The premises is currently operating as an off licence.
- 1.3 The Premises licence was granted on 15th August 2007 with opening hours 07:00 to 23:00 hours Monday to Sunday and for the supply of alcohol 08:00 to 23:00 hours Monday to Sunday. A copy of the current premises licence is included at **Appendix 1.**
- 1.4 The Premises Licence holder and the Designated Premises Supervisor is a Miss Jenya Dinchera DIMITROVA.

2.0 Review Application

- 2.1 An application for a Review under the Licensing Act 2003 has been made by East Sussex County Council Trading Standards Service on the 23rd June 2015, under the prevention of crime and disorder licensing objective.
- 2.2 The review application was served on the Licensing Authority, the person who holds the Premises Licence, and all other Responsible Authorities as specified under the Licensing Act 2003.
- 2.3 The reason for the review is that East Sussex County Council Trading Standards Service found illegal cigarettes stored on the premises- these cigarettes did not comply with the relevant tobacco products regulations and had no UK duty paid. There is also a concern expressed that the Designated Premises Supervisor is not acting suitably as regards control of these premises.
- 2.4 The proper notices advertising the application for the review of the premises licence were prominently displayed on the premises and at the Council offices. These were in a place where they could be seen by members of the public.

- 2.5 A notice has also been posted on Eastbourne Borough Council's website with regard to the review application, in order to inform the wider public of the application. Proper consultation in accordance with the requirements of the Licensing Act 2003 has been undertaken for the required period.
- 2.6 A copy of the review application is included at **Appendix 2**.
- 2.7 As a result of the consultation process that has run from the 24th June 2015 to the 21st July 2015, 1 further representation has been received.

3.0 The Hearing

- 3.1 The Licensing Act 2003 (Hearings) Regulations 2005 state that a hearing must be held by the Licensing Authority within 20 working days after the initial 28 day consultation period.
- 3.2 A determination on the review application must be made no later than 2 months after the day of the original giving of notice by relevant parties seeking a review of the premises licence.

4.0 The Decision Making Process - The Licensing Objectives

- 4.1 In their decision making generally 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

- 4.2 With regard to this application for a Licence Review, the Trading Standards Service believe that the licensing objective relating to the prevention of crime and disorder is being undermined.

5.0 Eastbourne Borough Council's Statement of Licensing Policy & Section 182 Guidance Issued

- 5.1 Copies of the Council's Statement of Licensing Policy have previously been circulated to Members. A copy is also retained in the Members Room.
- 5.2 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 2014 – 2019 available via:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/>

- Section 182 Guidance issued by the Department of Culture Media and Sport, (revised in June 2014) available via:

<https://www.gov.uk/government/publications/revised-guidance-issued-under-section-182-of-the-licensing-act-2003>

5.3 Eastbourne Borough Council’s Statement of Licensing Policy outlines the matters that the Authority will consider when determining matters under the Licensing Act 2003. As detailed above, the Trading Standards Service have brought this review based on an undermining of the prevention of crime and disorder licensing objective.

5.4 The Prevention Of Crime and Disorder

The Council’s 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 of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.0 Representations

6.1 A full copy of the representation is included at **Appendix 3**, however a summary appears below.

<p>Interested Parties</p> <p>There have been 0 representations from members of the public.</p>
<p>Representations from Responsible Authorities</p> <p>There has been 1 representation from responsible authorities:</p> <ul style="list-style-type: none"> ➤ Sussex Police – No representation ➤ Eastbourne Borough Council Health and Environment Team – No representation. ➤ Eastbourne Borough Council Health and Safety Department – No representation. ➤ Eastbourne Borough Council Planning Department– No representation. ➤ Eastbourne Borough Council Licensing Team- Representation included at Appendix 3. ➤ East Sussex Fire and Rescue Service – No representation ➤ Area Child Protection Team– No representations ➤ Trading Standards (East Sussex County Council) – No further representation. ➤ Primary Care Trust- No representation

7.0 Options open to the Sub Committee

7.1 The Sub Committee must have regard to the following:

- Eastbourne's Statement of Licensing Policy 2014-2019;
- Statutory guidance as amended in June 2014, under Section 182 of the Licensing Act 2003;
- Representations from any Responsible Authority;
- Representations from "interested parties";
- Representations from Ward Councillors.
- The application and supporting material.

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

- To modify the conditions of the licence
- To exclude a licensable activity
- To remove the Designated Premises Supervisor from the licence
- To suspend the licence for a period not exceeding 3 months, or
- To revoke the licence

7.3 The determination, if not completed at the hearing, shall be provided within 5 working days. Such a determination does not have effect until after the appeal period or, if an appeal is lodged, until after the appeal is disposed of.

8.0 Legal Considerations

8.1 The framework for the issue, variation, review and/or modification to licences is made under The Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act and regularly updates this guidance, most recently in March 2015. This Guidance is provided in order to assist the Council in carrying out functions under the Act.

8.2 Furthermore, the Licensing Sub Committee must have regard to Eastbourne Borough Council's Statement of Licensing Policy 2014-2019.

9.0 Human Rights

9.1 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. 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, and 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, 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.

Background Material

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (June 2014)
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council Licensing Statement 2014-2019
- Human Rights Act 1998

Licensing hearing/ocean review

APPENDIX

1: Copy of the current premises licence

2: Copy of the review application.

3: The Representation from Eastbourne Borough Councils Licensing service.

