



**Body:** Licensing Act Sub Committee

**Date:** 3<sup>rd</sup> August 2016

**Subject:** Coda, 125 Langney Road, Eastbourne, BN22 8AG

**Designated Premises Supervisor:** Ms Sarah Thresher

**Report Of:** Murrae Hume, Specialist Advisor - Licensing

**Ward(s)** Devonshire

**Purpose** To determine a review of a premises licence under the Licensing Act 2003.

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**For general release**

**1.0 Introduction & Background**

- 1.1 Coda, 125 Langney Road, Eastbourne has operated as a licensed premise in Eastbourne for a number of years. It is situated to the East of the town centre in Langney Road towards its junction with Bourne Street and is within Eastbourne Borough Council's Cumulative impact policy area. The building is owned by Ablewhite Developments Ltd and they lease the business to their tenant, who is currently Ms Sarah Thresher who acts as both Premises Licence holder and Designated premises Supervisor (DPS).
- 1.2 The premises operates as a public house and recorded music venue.
- 1.3 The site was issued a premises licence under the Licensing Act 2003 on 30<sup>th</sup> September 2005, which authorises the site to provide the following licensable activities within the times indicated below. A full copy of the current premises licence and layout plans are included at Appendix A:-

1.4

**The public opening hours of the premises:**

Monday to Saturday 11:00hrs - 23:20hrs  
Sunday 12:00hrs - 22:50hrs

**The times the licence authorises the carrying out of licensable activities:**

**Recorded Music:**

**Indoors**

Monday to Saturday 11:00hrs - 23:20hrs Sunday 12:00hrs - 22:30hrs	
<b>Provision of late night refreshment:</b>	<b>Indoors</b>
Monday to Saturday 23:00hrs - 23:20hrs	
<b>Sale by Retail of Alcohol:</b>	<b>Both on and off the premises</b>
Monday to Saturday 11:00hrs - 23:00hrs Sunday 12:00hrs - 22:30hrs	

## **2.0 Consultation Process**

- 2.1 In respect of application for Review, the Licensing Act 2003 requires the applicant, in this instance, Sussex Police, to serve a copy of the review application on the Licensing Authority, the person who holds the Premises Licence, and all other Responsible Authorities as specified under the Licensing Act 2003.
- 2.2 Notification of the application to review the premises licence was given by Sussex Police to all Responsible Authorities on the 14th June 2016, and was received by the Licensing Authority on the 14th June 2016, and was properly advertised from 15th June 2016. The prescribed site notice was displayed prominently at the premises, and at the Town Hall in order to inform the wider public of the application and for proper consultation to be undertaken for the full 28 day period. A copy of the application for review is attached at Appendix B, along with a copy of the prescribed site notice Appendix C.
- 2.3 As a result of the consultation process, no further representations have been received from responsible authorities or interested parties.

## **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. 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 of the intention to review the premises licence.

## **4.0 The Decision Making Process The Licensing Objectives**

- 4.1 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:
- A) The prevention of crime and disorder
  - B) Public safety
  - C) The prevention of public nuisance
  - D) The protection of children from harm

## **5.0 Commentary on Eastbourne Borough Councils Statement Of Licensing Policy**

NB. Copies Previously Circulated As Reference Material to Licensing Committees. Can also be located at

[www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing).

5.1 Whilst each application will be considered on its merits, the Licensing Sub Committee will have due regard for the Eastbourne Borough Council Licensing Statement, Section 182 Guidance revised in March 2015, in respect of the Licensing Act 2003, and the promotion of the Licensing Objectives.

## 5.2 **(A) The Prevention Of Crime and Disorder**

The Councils' Statement Of Licensing Policy states that a premises 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 of such and imposition of conditions may be considered and applied as appropriate in order to promote the Licensing Objectives.

## 5.3 **(B) Public Safety**

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

The Eastbourne Licensing Policy goes on to state that:

"Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act."

## 6.0 **The Review Application**

6.1 Eastbourne Borough Council is the relevant Licensing Authority in determining matters where an application is sought for the review of a premises licence under the Licensing Act 2003.

6.2 Section 51 provides that "where a premises licence has effect, an interested party or a Responsible Authority may apply to the relevant licensing authority for a review of the premises licence."

6.3 An application for a review in this instance has been applied for by Sussex Police, a responsible authority, under the following Licensing Objectives:

- The prevention of crime and disorder
- Public Safety.

## 7.0 **Grounds for Review**

7.1 A full copy of the application submitted by Sussex Police specifying the grounds for a

review is included in Appendix B.

- 7.2 Two Noise complaints were received by the Licensing authority in June and July 2014.
- 7.3 No representations have been lodged by Interested parties or other responsible authorities.
- 7.4 All those making representations and those responding to representations are entitled to attend the hearing in support of their case.

Representation from Interested Parties:  None Received.
Representations from Responsible Authorities:  ➤ Sussex Police – <b>Applicant.</b> ➤ East Sussex Fire and Rescue Service – No representations ➤ Health and Safety – No representations ➤ Planning Eastbourne Borough Council – No representations ➤ Area Child Protection – No representations ➤ Trading Standards, East Sussex County Council – No representations.

## **8.0 Options Open To The Committee**

- 8.1 When determining the application, the Licensing Sub Committee must have regard to the contents of the review application and any relevant representations contained therein. At this hearing the Licensing Authority must:
- Consider the request for review
  - Consider any relevant representations and associated evidence accordingly.
  - Where appropriate, take such steps as is considered necessary for the promotion of the Licensing objectives.
- 8.2 These steps are:
- To take no action
  - 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.
- 8.3 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.

## **9.0 Legal Considerations**

- 9.1 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore beyond the direct control of the individual, club or business to which the

licence, certificate or authorisation relates.

- 9.2 Licensing is about the appropriate management and control of licensed premises, qualifying clubs and temporary events and the associated licensable activities governed by the Licensing Act 2003. Any conditions attached to licences, certificates and permissions will focus on matters which are within the control of the Designated Premises Supervisor and/or their nominated representative, and will centre on the premises themselves and their immediate vicinity.
- 9.3 When considering these terms and conditions the Sub Committee will primarily focus on the direct impact of the activities taking place at the licensed premise on members of the public living, working or engaged in activity in the area concerned, in addition to the promotion of the Licensing Objectives.
- 9.4 In March 2015, the Department for Culture, Media and Sport issued revised Guidance under Section 182 of the Licensing Act 2003. This guidance is provided to assist the Sub Committee in carrying out their functions. Furthermore, the Licensing Sub Committee must have due regard of the Councils' Licensing Statement.

## **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. 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. 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.

## **11.0 Background Material**

- Licensing Act 2003
- LACORS Guidance – Committee Hearings
- Section 182 Statutory guidance to the Licensing Act 2003 Hearing and Regulations -
- Eastbourne Borough Council Licensing Statement 2005
- Human Rights Act 1998