

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Wednesday 3 August 2016

Premises Licence Holder/Designated Premises Supervisor:	Sarah Thresher
Premises:	Coda, 125 Langney Road
Reasons for Hearing:	Relevant representation received from Sussex Police under the prevention of crime and disorder and public safety licensing objectives.
Parties in attendance:	<p>Councillors: Jonathan Dow (Chairman) Colin Murdoch Jim Murray</p> <p>Licensing Authority: Murrae Hume (Specialist Advisor - Licensing) Claire Groves (Senior Specialist Advisor)</p> <p>Legal Advisor: Andy Eaton (Licensing Lawyer)</p> <p>Applicant: Alan Aylott (Solicitor) Sarah Thresher (Premises Licence Holder) Andrew Thresher (Manager) Leasa Parsons (Employee)</p> <p>Sussex Police: Peter Saville (Barrister) Jean Irving (Head of Licensing) Cathie Wolfe (Licensing Officer) PS Denham Vokins PC Richard Wilkes</p>
Decision made:	<p>Following the review hearing the members decided to:</p> <ul style="list-style-type: none"> • Remove The Designated Premises Supervisor • Suspend the premises licence for 14 days • impose the following conditions upon the premises licence:

1. CCTV: Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV Systems, operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.

CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times
 - CCTV footage will be stored for a minimum of 28 days.
 - The management will give full and immediate cooperation and technical assistance to the police in the event that CTV footage is required for the prevention and detection of suspected or alleged crime.
 - The CCTV images will record and display dates and times and these times will be checked regularly to ensure their accuracy.
 - Subject to Data Protection guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk for the police without difficulty or delay and without charge to Sussex Police, subject to Data Protection obligations.
 - Any breakdown or system failure will be notified to the police immediately and remedied as soon as practicable
2. A least one SIA registered door staff will be employed at the premises from 18.00 hours, until half an hour after the premises has closed on Thursday, Friday and Saturday's plus Bank Holidays, New Year's Eve, public holidays and at any time when a Temporary Event Notice is in operation.
3. An incident book will be kept and maintained at the premises and made available for inspection by police licensing officers and local authority officers on request.
4. A refusal register will be kept and maintained at the premises and made available for inspection by police licensing officers and local authority officers on request.

	<p>5. All staff shall have written authorisation from the Designated Premises Supervisor or Personal Licence Holder to permit them to sell alcohol.</p> <p>6. All staff will be trained in licensing law and the responsible sale of alcohol prior to commencement of selling alcohol; a staff training manual will be kept and maintained at the premises and made available for inspection by police licensing officers and local authority officers on request.</p> <p>7. Staff will contact the police as soon as practicable if there is evidence of drug use or suspected drug use within the premises.</p> <p>8. Zero tolerance notices in relation to drug use will be prominently displayed throughout the premises and a drug policy will be drawn up and implemented by the management to the satisfaction of Sussex Police.</p> <p>9. A Challenge 25 policy shall be in operation at the premises and staff will be suitably trained to implement the policy</p>
Reasons for Decision:	<p>The members were asked to consider a Review Application from Sussex Police for the Premises Licence for the Coda Bar, 125 Langney Rd, Eastbourne. The premises are situated within the council's cumulative impact policy area. The Members had been provided with a large bundle of evidence that included extensive Police statements and information concerning incidents emanating from the premises between 2009-2016. In addition the bundle also included evidence, statements and comments about the Police evidence, provided by the solicitor acting for the premises licence holder (PLH). The members also had regard to their own statement of Licensing Policy for the Council and the Secretary of State's S.182 Guidance in particular the section on Reviews.</p> <p>At the outset the police referred the members to the volume of incidents recorded at the premises, detailing a significant number of assaults, excessive drunkenness, operating beyond permitted hours, and two Police licensing visits within recent months involving drug swabs from inside the premises that showed high levels of Class A drugs. It was accepted by all parties that whilst some of the police evidence was historic, the members should consider the whole period 2009-2016 as useful background information on the poor management of the premises, but that they should focus on more recent events over the last two years. The Police argued that little or no improvements had been made owing to the reluctance of the PLH (also the current DPS), to meaningfully engage with the police to seek improvements. It was stated by the Police</p>

that details within the evidence bundle showed the efforts that had been made by Sussex Police to assist the PLH to seek improvements, but the reluctance of the PLH had meant that over the period of seven years little had changed. It was emphasised that there had been 18 incidents referring to excessive drunkenness since May 2015. It was stated by the Police that the licensing objectives for the prevention of crime and disorder, and the objective for public safety were being undermined, and that the members should accept the Police recommendations set out within the report for the imposition of conditions, and the removal of the current DPS, to ensure that changes were put into place to get the premises to comply with the licensing objectives.

The PLH (through her Solicitor) stated that significant improvements had been made in recent months following the adoption of several of the proposed conditions, and this had yielded a sharp decline in the number of reported incidents in recent months. It was also suggested that much of the Police evidence did not accurately depict the true extent of the incidents at the premises, as many had been recorded wrongly. It was said that some of the incidents recorded as disturbances were in actual fact the legitimate lawful ejection of patrons by the manager of the premises. It was said that this was the responsible actions of a manager, and that whilst on occasions he had called for Police assistance, that he was entitled to support from the Police when the violence perpetrated by drunken patrons posed a threat to staff. It was not accepted by the PLH that recorded instances of drunkenness were accurate evidence that the drunkenness had been caused by drinking at the premises, and that on more than one occasion it was the management refusing to serve people who had entered the premises drunk that had led to the incidents recorded. It was argued such incidents were unfairly recorded against the premises in a negative tone as opposed to any form of positive recordings that the management were acting responsibly.

The PLH made reference to a matrix grid that had been prepared detailing each recorded police incident from 2009, with their views on how the matter had occurred. It was said in conclusion that this removed most of the Police evidence and left a handful of incidents that did not warrant the proposed measures set out by the Police. In response the Police refused to accept the accounts set out within the matrix grid as an accurate account of the incidents, compared to the volume of statements from police officers within the bundle.

It was also suggested by the PLH that there had been a failure on the part of the Police and the Local Authority to keep the PLH informed of concerns about the management of the premises. It was stated that on the occasions when she was informed she acted quickly and appropriately to tackle the problems.

In response the Police stated that they had over the years regularly contacted the DPS, and indeed in recent months, had met with her to discuss the issues, but her reluctance to meaningfully engage had frustrated progress. Even on the occasions when agreement had been reached on a strategy for action, the PLH had changed her mind immediately following the meeting and nothing had been put in place. The Police stated that a disproportionate amount of time and resources were being expended on these particular premises which reflected the measures that were being proposed.

It was accepted by the DPS that there were difficulties supervising the premises from her location in Wales, but that had Police kept her informed she could have sorted out the problems, and possibly have avoided the necessity for the review hearing. The members were urged by the PLH to view the hearing as an opportunity to move forward with the premises. To look at the attitude of the new management that had been installed since November 2015; to look at the changes that had been implemented; and to see that this was the right approach to resolving the issues at the premises. It was emphasised that all but two of the proposed conditions had been implemented, and of the two not adopted, that was because they restricted the commercial operation and were financially punitive. It was said there was no real need for door supervisors as improvements were being made already, and that such condition would be financially restrictive. The PLH assured the members she would risk assess the need for SIA door staff and employ them when appropriate. It was said that the proposed suspension would also be punitive rather than act as a deterrent as stated by the police, and that again, this was not a proportionate response to the current problems.

The members were asked to consider whether on the evidence they had read and heard at the hearing, they considered that the licensing objectives were being undermined by the premises, and if so, what appropriate actions should be considered. The members were satisfied on balance that whilst some of the evidence was disputed by the parties, the majority of the evidence showed a history of incidents that demonstrated the licensing objectives had been, and were still being, undermined. The members were satisfied this was attributable to the poor management by the DPS. They were satisfied that police had attended the premises a disproportionate number of times for a recurring theme of drunkenness and violence that could not reasonably be refuted. They had concerns at the recent drug swabs that revealed high levels of class A drugs that fell outside the normal parameters of cross-contamination. They were satisfied on the evidence provided, and the submissions made at the hearing, that attempts had been made over a seven year period to engage with the PLH to achieve actions to

	<p>improve management at the premises. Whilst it was accepted some improvements had been made in recent weeks that could not reasonably excuse the failures of the PLH for the preceding years. The members were satisfied that had she been more prepared to purposefully engage with Police the review hearing could have been avoided. The members were not accepting that her failure to act could be blamed upon the failure to keep her constantly informed, as they believed that a responsible PLH and DPS would have had regular contact with her management team, and could therefore have been fully briefed on the ongoing issues raised by the police.</p> <p>The members were satisfied that the key areas of police concern, they being excessive drunkenness, violence and drugs were a constant thread to the recorded incidents over the years, and such incidents were attributable to the poor manner in which the premises had been managed. In their opinion the members had no doubt that the licensing objectives were being undermined and the measures recommended in the report were appropriate. The members considered that whilst the police had asked for a lengthy suspension of the licence, the required changes to the management of the premises could be effectively introduced with a shorter suspension, and were therefore minded to only impose a two week suspension to facilitate effective improvements.</p> <p>There was no doubt in the member's minds that the vast majority of the recorded incidents were attributable to poor management, and in particular the fact that the DPS was constantly absent from the premises. They had little difficulty concluding that the removal of the DPS was an appropriate action to take.</p> <p>The members rejected the request for a reduction in operating hours as they were satisfied that with the right manager in place, and the conditions applied as a result of this hearing, the premises could operate their current hours within the scope of the licensing objectives.</p>
Date of Decision:	3 August 2016
Date decision notice issued:	8 August 2016

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant for the review, the holder of the premises licence and any other person who made relevant representations in relation to the application.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.