

Body: Licensing Sub Committee
Date: 7th December 2017
Subject: Application For a Premises Licence For:
Nelson Coffee, 4 Terminus Road, Eastbourne, BN21 3LP
Report Of: Murrae Hume, Specialist Advisor
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 as Licensing Authority, for a new premises licence at Nelson Coffee, 4 Terminus Road, Eastbourne BN21 3LP.
- 1.2 The Premises are an established 38 cover Café in Eastbourne Town Centre.

2.0 The Application

- 2.1 An application for the grant of a new premises licence under the Licensing Act 2003 has been sought by Mr Benjamin Nicholson for the following activities:

Sale of Alcohol by retail, Recorded Music & Premises opening hours.

0800 – 1730 Monday to Wednesday (inclusive)

0800 – 2300 Thursday to Sunday (inclusive)

- 2.2 The application is for background music only and therefore a licence is not required for the music aspect of the application.

A licence is also not required for Recorded music between the hours of 0800 and 2300hrs if it takes place at a premises licensed for the sale of alcohol on the premises, provided the audience is less than 500 people.

Therefore if the Alcohol licence is granted a licence will not be required for any form of recorded music.

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 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**.

4.0 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. A number of "Responsible Authorities" have also been consulted as part of the process. There was a consultation period of 28 days for representations to be made.

4.2 In this instance, as a result of the consultation process, a representation has been received. The representations centres on the prevention of public nuisance (noise)
Licensing Objective

The representation is detailed at **Appendix 2** of this report.

4.3 Sussex Police as a responsible authority have consulted with the applicant and agreed a number of conditions, these include the provision of CCTV, a refusal and Incident book, Staff Training, a challenge 25 Policy. and a reduction in hours Monday to Wednesday 0800 – 1700. Thursday to Sunday 0800 – 2230hrs.

A copy of the e-mail correspondence is shown at **Appendix 3**.

5.0 The Decision Making Process - The Licensing Objectives

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

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

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 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, available via:

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

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.

6.4 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.

6.5 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. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.6 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. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.7 Protection of children from harm

The Statement of Licensing Policy requires that operating plans must specify the measures and management controls in place to protect children from harm. Conditions can be placed to restrict access to children to the premises during certain times or when certain licensable activities are taking place. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

7.0 Cumulative Impact

- 7.1 The premises in question is located within the Cumulative Impact Zone. It is recognised that the impact of the number, type and density of licensed premises in a given area may lead to problems of noise, nuisance, crime and disorder outside of, or a distance from licensed premises.
- 7.2 Cumulative Impact is defined as the "potential impact upon the Licensing Objectives of a significant number of licensed premises concentrated in an area," and is a proper matter for consideration by the Licensing Authority.
- 7.3 The Licensing Authority may receive representations from a Responsible Authority or 'Interested Party' that the cumulative effect of licences is leading to an area becoming saturated. This creates exceptional problems of disorder and nuisance, over and above the impact from individual premises which undermines the promotion of one or more of the licensing objectives.
- 7.4 Where valid representations are received, the Cumulative Impact Policy creates a rebuttable presumption that the application will be refused.

It is for the applicant to address the Cumulative Impact Policy and produce evidence to demonstrate that the matter:

- (a) Will not add to the cumulative impact caused by licensed premises and challenges already experienced in the area;
- (b) Will not undermine the promotion of the Licensing Objectives.

- 7.5 The Cumulative Impact Policy clearly states that licence applications in the Zone should be refused, unless Members are satisfied that the applicant has provided evidence to show that premises will not exacerbate existing issues in the locality, or undermine the promotion of the Licensing Objectives.
- 7.6 It is stressed that the presumption to refuse an application does not relieve the Responsible Authority or “Interested Party” of the need to provide supporting evidence in conjunction with a relevant representation. This must be submitted before the Licensing Authority may lawfully consider the effect of the Cumulative Impact Policy.
- 7.7 The Cumulative Impact Policy can be found within the Council’s Statement of Licensing Policy 2014 – 2019.

8.0 Representations

- 8.1 A copy of the representations are included at **Appendix 2**, however a summary appears below.

<p>Interested Parties</p> <p>One representation has been received, from person living above the premises.</p> <p>The representation centres on the prevention of public nuisance (noise) Licensing Objective.</p>
<p>Representations from Responsible Authorities</p> <p>There have been no representations from responsible authorities: Sussex Police have mediated hours and conditions as above.</p>

- 8.2 The Sub Committee will need to have regard to any history or likelihood of noise, nuisance, crime and disorder at the site, or in the vicinity of the site. In addition, matters impacting upon public safety and strategies to protect children from harm will also need to be considered.
- 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.
- 8.5 The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

9.0 Options open to the Sub Committee

- 9.1 The Sub Committee must have regard to the following:
- Eastbourne’s Statement of Licensing Policy 2014-2019;
 - Statutory guidance, under Section 182 of the Licensing Act 2003;
 - Representations from any Responsible Authority;
 - Representations from “any person”;

- The application and supporting material.
- 9.2 The Licensing Sub Committee must take the steps it considers appropriate for the promotion of the Licensing Objections and may;
- Grant the application in full as requested
 - Grant the application but amend it as appropriate and proportionate
 - Reject the whole or part of the application.
- 9.3 The Sub Committee are asked to note the procedures relating to this hearing which are contained in The Licensing Act 2003 (Hearing) Regulations 2005 included at Appendix 4.

10.0 Legal Considerations

- 10.1 Under section 18(3)(a) Licensing Act 2003 a person may apply for a premises licence. If relevant representations are received under section 17(5)(c) Licensing Act 2003 there must be a Sub Committee hearing to consider the application and the representations.
- 10.2 Under section 181 and Schedule 5 Licensing Act 2003 the applicant may appeal against the decision to refuse the application. Those who have made relevant representations may also appeal any decision made. Any appeal must be made within 21 days of receipt of the written decision notice.
- 10.3 The Legal Section has considered the contents of this Report IKEN 6900-EBC-MW on 21 November 2017

11.0 Human Rights

- 11.1 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

- Section 182 Statutory Guidance to the Licensing Act 2003
- Eastbourne Borough Council Licensing Statement 2014-2019
- Human Rights Act 1998

APPENDICES

- 1: Application for a premises licence under the Licensing Act 2003.
- 2: The Representation.
- 3: Correspondence between applicant and Sussex Police.
- 4: The Licensing Act 2003 (Hearing) Regulations 2005