

Report to: Licensing Sub Committee

Date: 24 January 2019

Title: Application For a Variation to Premises Licence For:
Boltons Bar, 4 Bolton Road, Eastbourne BN21 3JX

Report of: Danielle Ball, Specialist Advisor(Licensing)

Ward(s): Meads Ward

Purpose of report: To determine an application for a variation to a premises licence under the Licensing Act 2003.

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1 Introduction

1.1 An application has been received by Eastbourne Borough Council as Licensing Authority, for a variation to the premises licence at 4 Bolton Road, Eastbourne BN21 3JX.

1.2 The original premises licence was granted on 25/11/2005.

1.3 Existing Hours

Live Music (indoors and outdoors), Recorded Music (indoors and outdoors) & Sale of Alcohol by retail (on and off the premises)

Monday to Sunday 10:00 to 01:30

Late night refreshment

Monday to Sunday 23:00 to 00:30

Opening Hours

Monday to Sunday 10:00 to 02:00

There are some non-standard timings these can be seen on the current licence that is included at **Appendix 2**.

1.4 The Licence was transferred to OMI Leisure Ltd in October 2018

1.5 The applicant is applying for a variation to remove a number of conditions currently included on the licence.

2 The Application

2.1 An application for the grant of a variation to the premises licence under the Licensing Act 2003 for the following:

- No change to existing licensable activities or hours
- Removal of the following conditions-
 - a. within the outside garden area 'Café Bar' conditions shall apply such that service in the garden shall be by waiter/waitress service to persons that are seated.
 - b. seating as currently provided in the internal bar areas shall remain, comprising 22 table seats plus bar stalls on the lower level and 28 table seats plus bar stalls on the upper level.
 - c. All supervisors/staff subject to criminal record checks.
 - d. Double glazing fitted.
 - e. Remove the condition/objective to supply and serve food/late night refreshment.

2.2 The applicant appears to have suggested a new condition to replace (b) above and that is included at **Appendix 1**, but clarification will be sought from the applicant at the hearing.

3 Licensing Objectives

3.1 When submitting an application for a variation to 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**.

3.2 A copy of the current premises licence is included at **Appendix 2**.

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. 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, two representations have been received. The representations centre on the prevention of public nuisance (noise) and the prevention of crime and disorder Licensing Objectives

The representations have been received from Sussex Police and Eastbourne Borough Councils Environmental Health department. The representations are included at **Appendix 3** of this report.

5 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 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 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 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’ (any person) 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 Representations

8.1 A copy of the representations are included at **Appendix 3**, however a summary appears below:

Interested Parties

No representations have been received from interested parties.

Representations from Responsible Authorities

There have been no representations from responsible authorities:

- **Sussex Police** – Representation has been received based around crime and disorder and the fact the premises is within the Cumulative impact Area and no additional conditions have been offered in response to this.
- **Eastbourne Borough Council (Specialist Advisor) Environmental Health** – Representation has been received under the prevention of Public nuisance licensing objective.
- **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

8.2 There was an email conversation between the premises and the Noise Pollution specialist advisor a copy of these emails are included at **Appendix 4**.

8.3 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.

8.4 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.

8.5 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.

8.6 The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

9 Options open to the Sub Committee

9.1 The Licensing Sub Committee shall take the steps it considers appropriate for

the promotion of the Licensing Objections and may;

- Modify the conditions of the licence (alter or omit or add new)
- Reject the whole or part of the application

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

10 Legal Considerations

10.1 Under section 34 Licensing Act 2003 the holder of a premises licence may apply to the licensing authority for variation of the licence. Further under section 35 Licensing Act 2003 on such an application the licensing authority must grant the application unless relevant representations are made in which case a hearing must be held, unless the applicant and each person who has made representations agree that a hearing is unnecessary and having regard to the representations take such steps are referred to in paragraph 9.2 above as it considers appropriate for the promotion of the licensing objectives.

10.2 Under Schedule 5 Licensing Act 2003 if the Sub Committee rejects, in whole or in part, the application to vary the premises licence the applicant may appeal against the decision to the Magistrates Court or they may appeal against a decisions to modify the conditions. Further any person who has made relevant representations may appeal if they contend that any variation ought not to have been made or condition modified.

10.3 The Legal section of the Council has considered this report on 14th January 2019 (IKEN-7962-MW).

11 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.

12 Appendices

- Appendix 1 - Application for a variation to a premises licence under the

Licensing Act 2003

- Appendix 2 - Copy of the current premises licence
- Appendix 3 - The Representations
- Appendix 4 - Correspondence between applicant and Environmental Health Specialist Advisor.

13 Background papers

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