

Report to:	Licensing Act Sub-Committee
Date:	1st April 2019
Title:	Application for a new Premises Licence: 32-34 Cornfield Road, Eastbourne BN21 4QH
Report of:	Director of Service Delivery
Ward(s):	Meads Ward
Purpose of report:	To determine an application for a new premises licence under the Licensing Act 2003.
Officer Recommendations:	It is recommended that the Sub-Committee determine the New premises licence application and take into account the reasons for this application along with the representations against the grant of this licence.
Reasons for Recommendations:	The local Authority is responsible for granting premises licence applications under the Licensing Act 2003.
Contact Officer(s):	Name: Danielle Ball Post title: Specialist Advisor - Licensing E-mail: Danielle.Ball@lewes-eastbourne.gov.uk Telephone number: 01323 415333

1 **Introduction**

- 1.1 A valid application was received by Eastbourne Borough Council, on the 4th February 2019, as the Licensing Authority, for a new premises licence at 32-34 Cornfield Road, Eastbourne BN21 4QH. The Applicant is an individual, Ms Jaswant Bhopal.

2 **The Application**

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

Live music

Thursday- Friday 19:00hrs- 22:00hrs

Recorded Music

Monday- Saturday 10:00hrs- 23:00hrs

Sunday 10:00hrs- 22:30hrs

Supply of alcohol

Monday- Saturday 10:00hrs- 23:00hrs

Sunday 10:00hrs- 22:30hrs

Christmas Eve and New Year's Eve 10:00hrs- 02:00hrs

Opening Hours

Monday- Saturday 10:00hrs- 23:00hrs

Sunday 10:00hrs- 22:30hrs

Note: Live and recorded music are deregulated within an on-licensed premises authorised and open for the sale of alcohol from 08:00hrs to 23:00hrs for audiences up to 500. Live unamplified music does not need a licence anywhere and with no audience limit between 08:00hrs to 23:00hrs.

- 2.2 A copy of the application has been included at **Appendix 1**.

3 Licensing Objectives

- 3.1 When submitting an application for a new 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 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, the applicant conformed with all the requirements as laid out within the Licensing Act 2003 .
- 4.2 Three representations have been received by members of the public. The representations are included at **Appendix 2** of this report.
- 4.3 During the consultation process Sussex Police have requested specific conditions to be placed onto the licence if/when it is granted. There is an email trail between Sussex Police and the applicant. A copy of this is included at **Appendix 3**. The conditions that have been agreed are:

A. Customers will not be permitted to take alcohol outside of the premises to consume whilst smoking, congregating or eating on the pavement outside of the premises. Only to be consumed whilst sitting down at a table.

B. No alcohol to be consumed outside the front of the premises sitting on the bench or at the small table after 18:00hrs.

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.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/224048.pdf
- Section 182 Guidance issued by the Department of Culture, Media and Sport, available via: <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-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.

6.7 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.

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 anyone else making a representation 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 2**, however a summary appears below:

'Interested Parties'
Three representations have been received based around Public nuisance and prevention of crime and disorder.
Representations from Responsible Authorities
<p>The following summarises whether representations have been received from responsible authorities:</p> <ul style="list-style-type: none">➤ Sussex Police – Email trail around extra conditions is included at Appendix 3.➤ Eastbourne Borough Council (Specialist Advisor) Environmental Health – No representation➤ 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 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. The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives. The Sub-Committee may not impose any condition unless its discretion has been exercised following receipt of a relevant representation and is satisfied that it is appropriate to promote one or more of 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 Objectives and may;

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

- 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 18 Licensing Act 2003 if relevant representations are received about an application for a premises licence then the Licensing Authority must hold a hearing and having regard to the representations take such steps as it considers appropriate for the promotion of the licensing objectives. Those steps are contained with para 9.1 of the Report.

- 10.2 The applicant and those who have made relevant representations may appeal the decision of the Sub-Committee within 21 days of the receipt of the written decision notice.

- 10.3 The Legal section considered this Report on 15 March 2019 (Iken- 8155-MW).

11 **Financial Appraisal**

- 11.1 The cost of delivering the licensing function is fully covered by the Licensing fees.

12 **Human Rights**

- 12.1 The provisions of the Human Rights Act 1998, must be borne in mind by the Sub-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.

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Appendices

- Appendix 1 - Application for a new premises licence under the Licensing Act 2003
- Appendix 2 - The three representations
- Appendix 3 - Correspondence between applicant and Sussex Police

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Background papers

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