

**Body:** Licensing Sub Committee  
**Date:** 16 August 2005  
**Subject:** Application For Conversion & Variation of A Premises Licence For  
The Drive Public House, Victoria Drive, Eastbourne, BN20 8NH  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)** Old Town  
**Purpose** To determine a variation application under the Licensing Act 2003 for an existing licensed premises  
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## **1.0 Introduction & Background**

- 1.1 An application has been received from Punch Taverns PLC, Jubilee House, Burton Upon Trent, Staffordshire in respect of The Drive Public House, Victoria Drive, Eastbourne.
- 1.2 The premises have traded as a public house for many years without conditions and have applied to convert their Justices On Licence under the "grandfather rights" system established by the Licensing Act 2003. This allows them to supply alcohol to a premises licence for the sale of alcohol within the previous permitted hours and restrictions as set by the Licensing Act 1964, namely:
- 1000 hours – 2300 hours Monday – Saturday  
1200 hours – 2230 hours Sunday
- 1000 hours – 1500 hours Christmas Day  
1900 hours – 2230 hours
- 1200 hours -2230 hours Good Friday
- 1.3 In respect of the application for Conversion of the premises licence, no representations have been received from Sussex Police and as such, this part of the application is deemed granted.
- 1.4 The applicant has applied at the same time for a variation of such a premises licence in this transitional period, pursuant to Schedule 8 Para 71(b) of the Licensing Act 2003. The premises application form, found in Appendix A, seeks permission for the following licensable activities:-

- Indoor Sporting events
- Provision of regulated entertainment, comprising of:
- Live music
- Provision of recorded music
- Provision of facilities for similar entertainment of a similar description
- Sale of alcohol by retail

## **2.0 Hours of licensable activities:**

### **2.1 Sale of alcohol by retail**

- Monday – Wednesday                      1000 hours – 0000 hours
- Thursday - Saturday                      1000 hours – 0100 hours
- Sunday    1100 hours – 2330 hours

#### **Save For**

- An additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday
- An additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend
- An additional hour every Christmas Eve & Boxing Day
- A further 45 minutes on the either the morning following Fridays or Saturdays where the premises are hosting a pre-booked, private function
- To reflect existing New Years Eve/New Years Day hours

### **2.2 Other licensable activities**

As above

### **2.3 Open to the public**

- Monday – Wednesday – 0900 hours – 0030 hours
- Thursday – Saturday - 0900 hours – 0130 hours

## **3.0 Consultation Process**

- 3.1 The Licensing Act 2003 requires applicants to advertise variations both on the premises and in a local newspaper to inform the public of the application. A number of "Responsible Authorities" are also consulted, allowing a consultation period of 28 days for representations to be made. As a result of the consultation process, representations have been received.

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

4.1 In their decision making, the Licensing 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 The Application**

5.1 When submitting an application to vary a licence under the Licensing Act 2003, the applicant is required to describe the additional steps, if any; it intends to take to promote the four Licensing Objectives. The applicants' declaration can be seen on Page 23 of the application form. (Appendix A)

#### **6.0 Eastbourne Borough Councils Statement Of Licensing Policy**

6.1 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Statement and the promotion of the 4 Licensing Objectives.

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

Eastbourne Borough Council (EBC) 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.

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

EBC 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.

##### **(C) Prevention of Public Nuisance**

EBC 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.

**(D) Protection of children from harm**

EBC 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 from accessing 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 Representations**  
**(Appendix C)**

A full copy of all representations is included in Appendix C, however a summary appears below:

<p><b>Interested Parties</b></p> <p>➤ Mr and Mrs Mitchelmore of 151 Victoria Drive, Eastbourne make representations as “interested parties living in the vicinity.” Their representations centre around the issue of crime, disorder, noise and associated public nuisance, with particular reference to “wild discos, live music, karaoke in a glass conservatory area with no soundproofing, despite having a function room with soundproofing.”” Binge drinking, out of hours drinking and loud music was the norm and nuisance revellers falling out of the premises and making a nuisance of themselves was also a prerequisite.”</p> <p>It should be noted that there have been a series of letters received from Mr and Mrs Mitchelmore in respect of the application, however many points do not specifically relate to the premises and as such cannot be considered to be “relevant representations.” Furthermore, no new representations are contained in their submissions and as such, these have not been included in Appendix C.</p>
<p><b>Representations from Responsible Authorities</b></p> <p>➤ Environmental Health – Noise</p> <p>Complaints have been received in the past in respect of noise nuisance, which was witnessed by EHO. This noise could be attributed to windows and doors being left open and noise</p> <p>Limiting device not being used. Furthermore, noise nuisance was created by patrons being seated in the pub garden.</p> <p>Conditions have been suggested, including:</p>

- 1) All windows and doors are kept shut, save for access and egress whenever live or recorded music is being played.
- 2) All forms of music played in the premises shall be played through a noise limiter device, set at a level agreed by the Licensee and the Head of Environmental Health, Eastbourne Borough Council.
- 3) The designated "play area" will not be used by any person after 2100 hours. All other parts of the outside area operated by the premises shall not be used by any person after 2200 hours.

- 7.1 Discussions with all parties, including the applicants Solicitors have failed to resolve matters, hence the case being brought to Committee.
- 7.2 Regard will be had to any history or likelihood of nuisance. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.
- 7.3 In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives. Only necessary, proportionate and reasonable licensing conditions should be imposed on licence on a case by case basis. The Licensing Committee has been provided with a "Pool of Licensing Conditions," which can be attached to licences.

## **8.0 Options Open To The Panel**

- 8.1. The Panel must have regard for the Local Authority Licensing Statement and statutory guidance in the Licensing Act 2003. Copies of Guidance under Section 182 of the Licensing Act 2003 and Eastbourne Borough Councils Licensing Statement have been provided to the Licensing Committee as reference material.
- 8.2 The Panel must take the following steps as it considers necessary for the promotion of the Licensing Objectives:-
  - a) Grant the application as requested
  - b) Grant the application but modify it by altering hours or activities, adding conditions, \* or omitting parts as necessary for the promotion of the licensing objectives.
  - c) Reject the whole or part of the application

## **9.0 Legal Considerations**

- 9.1 The Department For Culture, Media and Sport has issued Guidance under Section 182 of the Licensing Act 2003. This guidance is provided to assist the Authority in carrying out their functions. Furthermore, the Licensing Panel must have due regard for the Eastbourne Licensing Statement.

## **Human Rights**

9.2 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.

## **10.0 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

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