

Body: Licensing Sub Committee
Date: 30 August 2005
Subject: Application For Conversion & Variation of A Premises Licence For The Bibendum, 1 Grange Road, Eastbourne
Report Of: Karen Plympton, Licensing Manager
Ward(s) Meads Ward
Purpose To determine a variation application under the Licensing Act 2003 for an existing licensed premises
Contact: Karen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937
E-mail address karen.plympton@Eastbourne.gov.uk

1.0 Introduction & Background

- 1.1 An application has been received by Bibendum, 1 Grange Road, Eastbourne, East Sussex.
- 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
- 2.0 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.
- 2.1 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:-
- Provision of regulated entertainment, comprising of:

Films

From 1000 – 0200 hours, save for when the hours for the sale of alcohol are extended on Bank Holidays and 12 event days- these hours are also extended.

Live/Amplified music/voice

From 2000 – 0200, 7 days a week. After midnight, will be limited to upstairs function room for private functions only.

Recorded music – via a jukebox or any music system, including DJ/Karaoke as part of normal Business/functions and to include audience particularly.

From 1000 – 0200, 7 days a week **save** for when the hours for the sale of alcohol are extended on Bank Holidays and 12 event days- these hours are also extended

Performance of dance, for both adults and children

From 1000 – 0200 hours – 7 days a week

Anything of a similar description – including compered events, quizzes, comedians using voice amplification

From 1000 – 0200 hours – 7 days a week

Provision of facilities for making music – Stage, microphone, sound system including amplifiers and speakers

From 1000 hours – 0200 hours 7 days a week, save for when the hours for the sale of alcohol are extended on Bank Holidays and 12 event days- these hours are also extended

Provision of facilities for dancing – at all times when acoustic/amplified music/amplified voice is played

1000 hours – 0200 hours, save for when the hours for the sale of alcohol are extended on Bank Holidays and 12 event days- these hours are also extended

Late Night Refreshment – provision of hot food and snacks, particularly during the wind down period

1000 hours – 0200 hours, save for when the hours for the sale of alcohol are extended on Bank Holidays and 12 event days- these hours are also extended

2.2 Sale of alcohol by retail

On all days, to sell alcohol from 1000 – 0200 hours the following day

Save For

- 1000 hours – 2359 hours – New Years Eve through to New Years Day
- 1000 hours – 0230 hours the following morning on Friday, Saturday, Sunday and Monday on Bank Holiday Weekends, Christmas Eve and Boxing Day.
- 1000 hours – 0230 hours on 12 “event days”

2.3 Open to the public

Monday – Sunday – 1000 hours – 0230 hours

Save for closing 30 minutes after the non standard timings listed in Section M.

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 (Copies previously circulated as reference material to committees. Can also be located at [www.eastbourne.gov.uk/licensing.](http://www.eastbourne.gov.uk/licensing))

- 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 B)

A full copy of all representations is included in Appendix B, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case.

Interested Parties

- Mrs Vanessa Peters, Grange Road, Eastbourne, makes representations as a person living in the vicinity of premises. Representations centre on the prevention of public nuisance objective. Correspondence states that she "Wholeheartedly supports the petition." "The Client base has changed and Bibendum attracts a larger number of younger drinkers who have less concern for the residents and cause more problems." "I have had customers sitting on my wall and often find empty drink bottles in my garden." "I have been disturbed by persons arguing in front of my house at closing time and the slamming of car doors." Observations are also made surrounding incidents involving vehicles and patrons. Ms Peters states "It is bad enough that this happens at 11.15 – 11.30, but it would be completely unacceptable for them to happen in the early hours." "I am concerned about the prospect of music and events on occasions when there is noise nuisance it inevitably results from the function." "At closing time the staff empty bottles into a skip or similar, which does not concern me at 11.13-11.30, but would concern me if it was happening in the early hours of the morning."
- Mr Andrew Martin-Smith, of Grange Road, Eastbourne makes representations as an interested party living in the vicinity of the premises. Representations centre on "nuisance and noise from patrons leaving the premises, empty bottles being left in the street and deposited in my garden, urination on my property, loud music played during function and noise at the rear of the property caused by cleaning and disposal of bottles." "My house suffers noise from front and rear, and the loss of sleep." "All of the nuisance will be increased and continue much later into the night if the application is granted."
- Doctor Sarah Ford of South Street makes representations as a local resident living in the vicinity. Representations centre on the objectives of public nuisance and public safety. She expresses "concern about the noise level from the proposed entertainments and the noise level that will exist in the early hours if the opening hours are extended." If granted, I believe there should be a decibel limiter on the amplification and customers should not be allowed to drink outside of the building past 11pm to limit external noise."
- Mr CT Fisher of Grange Mews, Grange Road, Eastbourne makes a representation as a person living in the vicinity of premises. He also acts as the spokes person for 39 other local residents. Representations focus on the Prevention Of Public Nuisance Objective. Correspondence states that "on a number of occasions, usually at the weekends, very loud music has been played," causing a "disturbance and a loss of sleep." During the summer months, Bibendums windows and doors are opened wide, which further accentuates the noise." "Some of the customers are very noisy when leaving and cause continuing disturbance." Instances of anti social behaviour are also cited. The extra hours requested "would mean that the street disturbance would continue until after

2.30am when local residents are trying to sleep.”

- Friar Charles Howell and Friar Seamus Hester of the Our Lady Of Ransom and St Gregory’s Church, Eastbourne, makes representations as a person residing in the area and as a local business. Representations centre on the prevention of nuisance. He states that an extension of hours “would be positively disruptive late at night.” He states “I feel it is my duty on behalf of all local residents of whatever denomination to oppose this application.”

Representations from Responsible Authorities

- Mr Fenton - Environmental Health – Noise makes representations under the prevention of nuisance Objective. He states “Several complaints have recently been received regarding noise emanating from the first floor function room. Whilst these have not been substantiated, it is important that controls are in place to ensure noise does not cause nuisance to neighbouring properties” He suggests conditions:
 - Save for access and egress, doors and windows must remain closed at all times when functions involving live/amplified music are taking place.
 - The noise limiter must be used to control the volume of music from all entertainment in the function area to ensure that noise is not audible at the nearest residential properties.”

- 7.1 Discussions with all parties, including the applicants 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. Appendix D provides the Licensing Committee with a “Pool of Licensing Conditions,” which can be attached to licences where it is considered necessary and appropriate.

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

*** Included as reference material for the Committee**

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