

**Body:** Licensing Sub Committee  
**Date:** 19 September 2005  
**Subject:** Application For Conversion & Variation of A Premises Licence For The Flamenco Tapas Restaurant, 8 Cornfield Terrace, BN21 4NN  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)**  
**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 by The Flamenco Tapas Bar, 8 Cornfield Terrace, Eastbourne, East Sussex.
- 1.2 The site have traded as a licensed premises 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
- New Years Eve – New Years Day as per Government deregulation Order
- 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 and has been determined as such within statutory timescales.
- 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**

**SECTION E**

**Live Music – Provision of both amplified and non-amplified music limited to 2 musicians at the management's discretion without 14 days notice to the Police.**

Monday – Sunday 2000 hours – 2230 hours

**Non Standard Timings**

On all Bank Holidays (except Christmas) to include the preceding day, (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for the sale of alcohol on Saturdays at the latest.

**SECTION G**

**Performances of dance – Allowing the performance of Flamenco and other dance limited to 2 performers in number at the management's discretion without 14 days prior notice to the Police**

Monday – Sunday 2000 hours – 2230 hours

**Non Standard Timings**

On all Bank Holidays (except Christmas) to include the preceding day, (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for the sale of alcohol on Saturdays at the latest.

**Section L**

**Provision of late night refreshment- service of hot prepared food, snacks and beverages at the Management's discretion without 14 days prior notice to the Police**

Monday – Thursday	2300 hours – 2330 hours
Friday – Saturday	2300 hours – 0000 hours
Sunday	2230 hours – 2300 hours

On all Bank Holidays (except Christmas) to include the preceding day, (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for the sale of alcohol on Saturdays at the latest.

**Section M**

**Supply of alcohol**

Monday – Thursday	1000 hours – 2330 hours
Friday – Saturday	1000 hours – 0000 hours
Sunday	1000 hours – 2300 hours

On all Bank Holidays (except Christmas) to include the preceding day, (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for the sale of alcohol on Saturdays at the latest.

**Section O**  
**Open to the public**

Monday – Thursday	1000 hours – 0000 hours
Friday – Saturday	1000 hours – 0030 hours
Sunday	1000 hours – 2330 hours

On all Bank Holidays (except Christmas) to include the preceding day, (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for the sale of alcohol on Saturdays at the latest.

**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 24 of the application form. (Appendix A)
- 5.2 Several parties making representations have indicated that

they would be prepared to withdraw representations, subject to the above conditions being attached to any licence. Further to representations being received, the applicant forwarded a written response to the representations made and this should be given due weight and consideration by the Committee.

**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
<ul style="list-style-type: none"><li>➤ Mrs J Penman of Burlington Place, Eastbourne, makes representations as a person living in the vicinity of the premises. Representations focus on the prevention of crime and disorder and the prevention of nuisance objectives.</li><li>➤ Mrs M Threapleton of Burlington Court, Eastbourne makes a representation as a person living in the vicinity of the premises. Representations focus on the prevention of public nuisance objective.</li><li>➤ Mrs J Pancham of Chiswick Place, Eastbourne makes representations as a person living in the vicinity of the premises. Representations focus on the prevention of public nuisance objective.</li><li>➤ Messer's H, E and HM Skardhamar of Burlington Court, Eastbourne makes representations as persons living in the vicinity of the premises. Representations focus on the prevention of public nuisance objective</li><li>➤ Messer's AH Game, C Alexander and P Stonecroft of flats at Chiswick Place, Eastbourne make representations as local residents living in the vicinity of the premises. Whilst the letter states that they write to object on behalf of all residents in the flats, 3 parties have signed the correspondence. Representations focus on the prevention of public nuisance objective.</li><li>➤ JF and SM Dickenson of Burlington Court, Eastbourne make representations as persons living in the vicinity of the premises. Representations focus on the prevention of public nuisance objective.</li><li>➤ Mr and Mrs Poppy and Ms Golledge make representations as persons living in the vicinity of the premises. Representations focus on the public nuisance objective.</li></ul>
Representations from Responsible Authorities

- Police – No representations
- Fire – No representations
- Health and Safety – No representations
- Planning EBC – No representations
- Area Child Protection – No representations
- Environmental Health EBC – No representations
- Trading Standards East Sussex County Council – No representations

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 Conditions may be added to licences or revisions made as considered necessary for the promotion of the Licensing Objectives. Only necessary, proportionate and reasonable licensing conditions should be imposed on licences on a case by case basis.

## **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 steps it considers necessary for the promotion of the Licensing Objectives and may:-

- 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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