

Body: Licensing Sub Committee
Date: 27 September 2005
Subject: Application For Conversion & Variation of A Premises Licence
For The Namaskar Bar, 56A Seaside Road, Eastbourne
Report Of: Kareen 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 Namaskar Bar, Seaside Road, Eastbourne, East Sussex. The premise is a 3 room venue, with an outside drinking area.
- 1.2 The premises have trade as a venue bar. They have applied to convert their Justices On Licence under the "grandfather rights" system established by the Licensing Act 2003. This allows them to sell and supply alcohol both on and off the premises:
- 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.
- 1.4 The application states that the premises has the benefit of live music and dancing and performances of dance at the premises. However Eastbourne Borough Council records indicate that whilst application was made for a Public Entertainment Licence, it was not issued due to a number of issues. Therefore the premises is not in a position to convert this aspect, since there is no such licence in force.

- 2.0 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 A. Plays – Subject to the relevant approvals being set in place. Door person to regulate entry (Indoors)

Monday	1100 hours – 1600 hours 1900 hours – 0000 hours
Tuesday	1100 hours – 1600 hours 1900 hours – 0000 hours
Wednesday	1100 hours – 1600 hours 1900 hours – 0000 hours
Thursday	1100 hours – 1600 hours 1900 hours – 0000 hours
Friday	1100 hours – 1600 hours 1900 hours – 0000 hours
Saturday	1100 hours – 1600 hours 1900 hours – 0000 hours
Sunday	1100 hours – 1600 hours 1900 hours – 0000 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION B. Films – DVD, Videos plus talks and seminars and film makers (Indoors)

As above

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION E Live Music (Indoors)

As above

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION F Recorded music to include DJs (Indoors)

As above

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION G Performance of dance and classes (Indoors)

Monday – Sunday 1100 hours – 0000 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION H Anything of a similar description to that falling within (e), (f) or (g) (Indoors) – dance, music, film – all forms of creativity

Monday – Sunday 1100 hours – 0000 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION J Provision of facilities for dancing to recorded music and DJs (Indoors)

Monday – Sunday 1100 hours – 0030 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION K Provision of facilities for entertainment of a similar description to that falling within (i) or (j) Plays, live music, film, PA and DJ equipment (Indoors)

Monday – Sunday 1100 hours – 1600 hours
1900 hours – 0000 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION L Late Night Refreshment (Indoors & Outdoors) Last orders at 0040, patrons to leave the premises at 0055 hours.

Monday – Sunday 1100 hours – 0030 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION M Supply of alcohol

Monday – Sunday 1100 hours – 0030 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

SECTION O Open to the public

Monday – Sunday 0700 hours – 0030 hours

Non Standard timings – “An extra hour for Bank Holidays” as per covering letter

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 Given the shortness of time, a mediation meeting with the interested party who resides in the vicinity of the premises meeting has not been possible. A representation was received from Mr Albon of Environmental Health, Noise but this has been resolved. (Correspondence attached at the rear of the application form.)

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.)

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

- Mr W Gray makes a representation as a person living in the vicinity of the premises. Representations centre on the prevention of nuisance objective. Correspondence states "there have been major problems in regards to loud music since September 2004." "Extending opening hours will make things worse than they already are." "I live above the bar and have to put up with music but also as it closes I hear them clearing up. This will go on after 0100 hours each morning if the licence is extended."

NB Mr Gray has spoken to the Licensing Team And advises

us that his representation is Withdrawn as he is moving from the property in the near future

Representations from Responsible Authorities

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

- Environmental Health EBC – Representations have been received from Mrs Hickling of Environmental Health stating “A noise abatement notice under Section 80 of the Environmental Protection Act 1990 was served on 28.10.04, because of continuing noise nuisance being caused to neighbouring properties.” Correspondence identifies the basement as the primary source of concern. Ms Hickling suggests that certain conditions would be required to be attached to any licence and implemented prior to the premises trading.

- 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. The Licensing Committee has been provided 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 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