

**Body:** Licensing Sub Committee  
**Date:** 26 September 2005  
**Subject:** Application For Conversion & Variation of A Premises Licence For Hotel Cuba, 1 Compton Street, Eastbourne  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)**  
**Purpose** To determine an application for a new premises licence under the Licensing Act 2003  
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## **1.0 Introduction & Background**

- 1.1 An application has been received by Hotel Cuba, 1 Compton Street, Eastbourne, East Sussex. The hotel benefits from an external area which its customers can use.
- 1.2 The premises currently provides accommodation to residents, with associated meals afforded to those guests. It is understood that premises wishes to be open 24 hours a day, 7 days a week for residents and bona fide guests, although this is not clear from the application form. The premises is also open to the public for the sale and/or consumption of alcohol on and off the premises.
- 1.3 The Justices On Licence for the site was declared final on 15<sup>th</sup> July 2005 and the premises has been trading under the authority of this licence since that date. However, because the licence was not in existence prior to the First Appointed Day of the 7<sup>th</sup> February 2005 – the applicants could not apply to convert the licence under the grandfather rights system established by the Licensing Act 2003.
- 1.4 A new premises licence is sought within the following terms:

Provision of regulated entertainment, comprising of:

### **Section E Live Music (indoor)**

Monday – Sunday 1200 hours – 0000 hours

### **Non Standard Timings**

New Years Eve 1800 hours – 0100 hours

Plus 12 other events for which Temporary Event Notices will be sought

**Section F Recorded Music (indoor)**

Monday – Sunday 1200 hours – 0000 hours

**Non Standard Timings**

As above

**Section G Performances of dance (Both indoor & outdoor)**

Exhibition of cultural dancing by professional and amateur dance groups.

Monday – Sunday 1200 hours – 0000 hours

**Section H Anything of a similar description to that falling within (e), (f) or (g) ( indoor)**

Monday – Sunday 1000 hours – 0000 hours

**Non Standard Timings**

As above

**Section I Provision of facilities for making music (indoor)**

Disco jockey podium/cubicle/spot position with amplifier and speakers.

Monday – Sunday 1400 hours – 0000 hours

**Non Standard Timings**

As above

**Section J Provision of facilities for dancing (both indoor and outdoor)30sq metre inside dance floor and outside dancing in the enclosed garden at the side of the premises.**

Monday – Sunday 1400 hours – 0000 hours

**Non Standard Timings**

As above

**Section L Late Night Refreshment (indoor)**

Monday – Sunday 2300 hours - 0500 hours

**Non Standard Timings**

As above

**2.4 Supply of alcohol (both indoor and outdoor)**

Monday – Thursday	1100 hours – 0000 hours
Friday & Saturday	1100 hours - 0100 hours
Sunday	1100 hours - 2300 hours

## **2.5 Open to the public**

Monday – Thursday	1100 hours – 0030 hours
Friday & Saturday	1100 hours – 0130 hours
Sunday	1100 hours – 2330 hours

**NB Open to hotel residents and guests 24 hours a day seven days a week.**

**However, it is unclear whether the premises seeks permission for the premises to be open 24 hours a day, 7 days a week for all licensable activities. The newspaper advert and site notice refer to the supply of alcohol being available to 24 hours a day, 7 days a week to residents and bona fide guests. Open to the public for licensable activities as specified.**

## **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, a number of 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)

5.2 Discussions with all parties, including the applicants have failed to resolve matters, hence the case being brought to Committee.

5.3 Further to representation being received, the applicant has provided further evidence in respect of his application and this can be found 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](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 E M Pell of Hartington Place, Eastbourne makes a representation as a local resident living in the vicinity of the premises, under the objective of crime and disorder correspondence states that "late night opening could encourage</li></ul>

drug dealing in the area, and extend the problems that already exist in the area with regards to rubbish.”

- Mr & Mrs Chamberlain of Hartington Place, Eastbourne make a representations as a local residents living in the vicinity of the premises. Representations centre on the prevention of nuisance objective. Correspondence states that “disturbance levels would be unacceptable in close proximity to where people are trying to sleep.”
- Miss G Simmonds of Hartington Place makes a representation as a local resident living in the vicinity of the premises. Representations under the objective of Public Safety state “the kitchen door is open and frequently used by adults, children and a dog, questioning hygiene safety. Under the objection of Public Nuisance correspondence state “As a residential area it is not suitable for late-night drinking. Concern regarding loud voices and traffic noise will be heard by all who reside here.” Further correspondence has been received which is also attached in Appendix B regarding the planning permission which has been allowed to this premises.  
**However planning considerations are not a direct matter for the Licensing Committee.**
- Miss P Jenkyns of Hartington Place makes a representation as a person living in the vicinity of the premises, under the objection of public nuisance correspondence states “not only are concerned about noise or disturbance from the premises but also the noise and behaviour of those leaving the premises.”

**NB Miss Jenkyns has now withdrawn her representation after speaking with the applicant. Further correspondence from her now supports the application. A copy of the correspondence can be found in Appendix B.**

- Mr McEvey of Hartington Place makes a representation as a person living in the vicinity of the premises. His representation centres on the objection of public nuisance stating “late night trading for sale and entertainment purposes is totally contrary to the environment of high density apartment buildings and would only encourage late night noise and disturbance totally alien to the present residents of the area.”
- Mr & Mrs Haddow of Gannet House, Hartington Place speaks for themselves and 42 other residents of Gannet House. They make a representation as people living in the vicinity of the premises under the objection of public nuisance stating “ there is already a public nuisance from people parking in the area, slamming doors and loud voices. Staying open until midnight or 1a.m. will only exacerbate this.”

- 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 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.

7.2 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

### **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

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