

Committee Report

Body: Licensing Sub Committee

Date: 3rd October 2005

Subject: Application For Conversion & Variation of A Premises Licence For The Dolphin, 14 South Street, Eastbourne

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 Dolphin Public House, Eastbourne, East Sussex. The premise is a public house, with 2 bars and a rear patio garden
- 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 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 an as such, this part of the application is deemed granted and has been determined as such within statutory timescales.
- 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 B – (Indoor) Provision of Video & Television

Monday – Thursday	1000 hours – 2400 hours
Friday – Saturday	1000 hours – 0100 hours
Sunday	1100 hours – 2400 hours

Non Standard Timings

Bank Holidays 1000 hours – 0100 hours

Section C – Indoor sporting events

Monday – Thursday	1000 hours – 2400 hours
Friday – Saturday	1000 hours – 0100 hours
Sunday	1100 hours – 2400 hours

Non Standard Timings

Bank Holidays 1000 hours – 0100 hours

SECTION E – Live music, acoustic, amplified music and voice/Discos. TO CEASE AT LEAST 1 HOUR BEFORE CLOSING. On a twice per week basis

Monday – Saturday	1000 hours – 2330 hours
Sunday	1100 hours – 2330 hours

SECTION F - Recorded music – including jukebox

Monday – Thursday	1000 hours – 2400 hours
Friday - Saturday	1000 hours – 0100 hours
Sunday	1100 hours – 2400 hours

SECTION I - Provision of facilities for making music – live music with acoustic/amplified music/voice. Karaoke with microphone and screens/discos. ALL PERFORMANCES TO CEASE AT LEAST ONE HOUR BEFORE CLOSING . ON A TWICE PER WEEK BASIS

Monday – Thursday	1000 hours – 2330 hours
Friday – Saturday	1000 hours – 0030 hours
Sunday	1100 hours – 2330 hours

SECTION J - Provision of facilities for dancing – spontaneous dancing with live/recorded music

Monday – Thursday	1000 hours – 2400 hours
Friday - Saturday	1000 hours – 0100 hours
Sunday	1100 hours – 2400 hours

SECTION L – Late night refreshment – hot drinks and snacks

Monday – Thursday	2300 hours – 2400 hours
Friday – Saturday	2300 hours – 0100 hours
Sunday	2300 hours – 2400 hours

SECTION M

Supply of alcohol

Monday – Thursday	1000 hours – 2400 hours
Friday - Saturday	1000 hours – 0100 hours
Sunday	1100 hours – 2400 hours

Non Standard Timings

Bank Holidays 1000 hours – 0100 hours

SECTION O - Open to the public

Monday - Thursday	1000 hours – 0030 hours
Friday – Saturday	1000 hours – 0130 hours
Sundays	1100 hours – 0030 hours

Non Standard Timings

Bank Holidays 1000 hours – 0100 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 in Section Q 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.)

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"> ➤ Mr Ronald Gee of The Gloucester Mews Management Committee, 8 Gloucester Mews, Eastbourne makes a representation on behalf of the above Committee, which is established to represent residents in the area. He acts as the spokesperson for 28 residents. Representations focus on the prevention of public nuisance, prevention of crime and disorder and public safety objectives. ➤ Ms Peters of Grange Road, Eastbourne, makes a representation as a person living in the vicinity of the premises. Representations centre on the prevention of nuisance objective, ➤ Mr CT Fisher of Grange Road, Eastbourne makes representations on behalf of persons living in the vicinity of the premises. Correspondence has been signed by 11 other signatories who also reside in the vicinity. All have been advised of the hearing. Representations centre on the prevention of nuisance objective.
Representations from Responsible Authorities
<ul style="list-style-type: none"> ➤ Police – no representations ➤ Fire – No representations ➤ Health and Safety – No representations ➤ Planning EBC – No representations ➤ Area Child Protection – No representations ➤ Environmental Health EBC – Representations have been received from Mr Fenton from the Environmental Health, Noise Department. Correspondence states I request that the provision of live music be prohibited until it can be clearly demonstrated that it can take place without causing unreasonable disturbance to nearby residential properties. I do not feel that the building in its current state is structurally adequate.” “It would be beneficial for an acoustic report to be carried out identifying necessary works needed to ensure adequate sound insulation before any variation is granted. ➤ 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 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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