

Body: Licensing Sub Committee
Date: 1 August 2007
Subject: Application to vary a Premises Licence for Kentucky Fried Chicken, 29-31 Langney Road, Eastbourne
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Devonshire
Purpose To determine a variation under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Southdowns Restaurants Ltd, Bluefish House, 46 High Street, Hurstpierpoint, West Sussex, BN6 9RG for the premises known as Kentucky Fried Chicken, 29-31 Langney Road, Eastbourne.

2.0 Current Premises Licence

- 2.1 The premises has traded as a restaurant providing hot food, both to take away and eat on the premises, for a number of years. The current premises licence, a copy of which can be found at Appendix A, permits the following:-

Open to the Public

11:00 hours – 01:00 hours Monday – Sunday

Provision of Late Night Refreshment

23:00 hours – 01:00 hours Monday – Sunday

3.0 The Variation Application

- 3.1 An application to vary their premises licence has been sought, to extend the time the premises is open to the public and can provide late night refreshment.

The details of the variation are as follows:

Section L – Late Night Refreshment (Indoors)

11:00 hours – 04:00 hours Monday - Sunday

Section O - Open to the public

09:00 hours – 04:00 hours Monday – Sunday

4.0 Removal of Conditions

4.1 The applicant is not seeking to remove any of the current licence conditions.

5.0 Licensing Objectives

5.1 When submitting an application for a variation to a premises licence under the Licensing Act 2003, the applicant is required to describe the additional steps, if any, they intend to take to promote the four Licensing Objectives. The applicants' declaration can be seen on page 21 of the application form, included at Appendix B.

6.0 Consultation Process

6.1 The Licensing Act 2003 requires applicants to advertise both on the premises and in a local newspaper in order to inform the public of the application. A number of "Responsible Authorities" are also consulted as part of the process, 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.

7.0 The Decision Making Process The Licensing Objectives

7.1 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

8.0 Eastbourne Borough Councils Statement Of Licensing Policy

8.1 Copies of the Council Licensing Policy Statement have been circulated to the Licensing Committee previously. Further copies can also be found at www.eastbourne.gov.uk/licensing.

8.2 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Statement, Section 182 Guidance issued in respect of the Licensing Act 2003, and the promotion of the 4 Licensing Objectives.

8.3 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.

8.4 Public Safety

The 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.

8.5 **Prevention of Public Nuisance**

The 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.

8.6 **Protection of Children from harm**

The 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.

9.0 **Representations (Appendix C)**

9.1 A full copy of all representations is included in Appendix C, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case. A map has also been provided at Appendix C to indicate the location those making representations to assist the Committee in determining whether they are "interested parties" within the terms of the Licensing Act 2003.

Interested Parties -

- A petition consisting of 35 signatures of persons either living in the vicinity or involved in a business in the vicinity. The representation comes under the prevention of public nuisance and the crime and disorder licensing objectives.
- Mr & Mrs Hughes of Susans Road make a representation as persons living in the vicinity. Their representation falls under the prevention of public nuisance, crime and disorder licensing objectives.
- Ms Denman of Langney Road makes a representation as a person living in the vicinity. The representation falls under the prevention of public nuisance licensing objectives.
- Mr & Mrs Neale of Langney Road makes a representation as a person involved in a business in the vicinity. Their representation falls under the prevention of public nuisance and crime and disorder licensing objectives.

- Mr Patel of Langney Road makes a representation as a person involved in a business in the vicinity. The representation falls under the prevention of public nuisance and crime and disorder licensing objectives.

Representations from Responsible Authorities

- Environmental Health Noise – No representations
- **Police** – Inspector Nicholas Porter of Sussex Police has made a representation under the crime and disorder licence objective.
- 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

9.2 Regard will be had to any history or likelihood of nuisance at the site. Powers may be exercised to impose conditions as to hours of opening, types of licensed activity and mechanisms to promote the Licensing Objectives in order to avoid unreasonable disturbance to residents in the locality.

9.3 In determining what conditions should be attached to licences and certificates, if necessary these should only be attached in order to promote the licensing objectives.

9.4 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.

10.0 Cumulative Impact Policy

10.1 The premises in question is situated within the Councils designated Cumulative Impact Policy. This has been circulated separately and can be found at <http://www.eastbourne.gov.uk/council/meetings/cabinet>.

11.0 Options Open To The Panel

11.1 The Panel must have regard for the Eastbourne Licensing Policy Statement, the Licensing Act 2003 and the associated Section 182 Guidance in the Licensing Act 2003. Copies of both have been provided to the Licensing Committee as reference material.

11.2 The Panel must take the following steps 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

12.0 Legal Considerations

- 12.1 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.

13.0 Human Rights

- 13.1 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.

14.0 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
- Cumulative Impact Policy
- Human Rights Act 1998