

Body: Licensing Act Sub Committee
Date: 26 November 2007
Subject: Application to vary a Premises Licence for Minnesota Jax, 121-123 Seaside Road, Eastbourne
Report Of: Karen 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 Mr Darren Bush, the new owner of the premises known as Minnesota Jax, 121-123 Seaside Road, Eastbourne.
- 1.2** The premises have traded as a proprietary club for a number of years, specialising in traditional and American pool. In July 2006 a variation licence was granted to permit adult entertainment by way of pole and lap dancing in the basement area only of the premises, for a maximum of 2 nights a week. This variation also included an increase in operating hours.

2.0 Current Premises Licence

- 2.1 The current premises licence, attached as Appendix A permits the following:-

Open to the Public:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 02:00 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Recorded Music:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Performances of Dance:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Anything of a similar description to that of live music, recorded music or performances of dance:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Dancing:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Entertainment of a similar description of that of making music and dancing:

12:00 hours – 23:30 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 23:00 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Provision of Late Night Refreshment

23:00 hours – 23:30 hours	Monday - Wednesday
23:00 hours – 01:00 hours	Thursday
23:00 hours – 01:30 hours	Friday & Saturday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Sale of Retail of Alcohol:

12:00 hours – 23:00 hours	Monday - Wednesday
12:00 hours – 01:00 hours	Thursday
12:00 hours – 01:30 hours	Friday & Saturday
12:00 hours – 22:30 hours	Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31st December to the start of permitted hours at 1000 hours 1st January.

Adult Entertainment:

Permits lap/pole dancing in the basement area of the club on no more than 2 occasions per week. This area is covered by 45 separate conditions. The current conditions are attached at Appendix 4.

3.0 The Variation Application

- 3.1 An application to vary the premises licence (Appendix B) has been sought, to extend the hours for all licensable activities, to include live music, indoor sporting events and allow full nudity in respect of the pole/lap dancing activities.

The details of the variation are as follows:

Section C – Indoor Sporting Events

12:00 hours – 03:00 hours	Monday - Sunday
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Section E – Live Music (Indoors)

12:00 hours – 00:00 hours	Monday - Sunday
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Section F – Recorded Music (Indoors)

12:00 hours – 03:00 hours	Monday - Sunday
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Section G – Performances of Dance (Indoors)

12:00 hours – 03:00 hours Monday - Sunday

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

12:00 hours – 03:00 hours Monday - Sunday

Section I – Provision of facilities for making music (Indoor)

12:00 hours – 03:00 hours Monday - Sunday

Section J – Provision of facilities for dancing (Indoors)

12:00 hours – 03:00 hours Monday - Sunday

Section K – Provision of facilities for entertainment of a similar description to that falling within (i) or (j) (Indoors)

12:00 hours – 03:00 hours Monday - Sunday

Section L – Late night refreshment (indoor)

23:00 hours – 03:00 hours Monday - Sunday

Section M - Supply of alcohol (on & off the premises)

12:00 hours – 02:30 hours Monday – Sunday

Section O - Open to the public

07:00 hours – 03:00 hours Monday – Sunday

Adult Entertainment

Full nudity for the Pole/Lap Dancing activities, both male and female. Activities will also include Poker and Comedy nights of an adult nature.

4.0 Removal of Conditions

4.1 The applicant is seeking to remove or vary the following conditions currently.

Remove:

Licence Conditions Relating To The Ground Floor Of The Premises
(Appendix 4 - Annex 2)

- Close Circuit Television in the Ground Floor of the premises and the provision Registered Door Staff
- Regular Fire Inspections by Sea Fire
- The provision that requires a first aider on site at all times

When Adult Entertainment is being carried out the following will be removed:

- Number 22, relating to meetings with Sussex Police
- Number 31 regarding the removal of the semi nudity clause - Number 42 regarding the removal of the restriction relating

- to the provision of adult entertainment 2 nights week
- Number 45 relating to nature of promotional material.

Vary:

When Adult Entertainment is being carried out:

- Number 37 – to enable physical contact between the dancer and customer.
- Number 43 – No photographs depicting nudity will be displayed outside the premises.
- Number 44 – Any promotional advertising will not display nudity or topless performers.

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 the decision making process, the Licensing Sub- Committee must consider mechanisms 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 **Cumulative Impact Policy**

9.1 The premises in question is situated within the Council's designated Cumulative Impact Policy Zone. This has been circulated separately and can be found at www.eastbourne.gov.uk/council/meeting/cabinet.

9.2 Within the context of the Councils Licensing Policy Statement, Cumulative Impact is defined as

"The potential impact on the promotion of the Licensing Objectives where there are a significant number of licensed premises concentrated in one area."

9.3 Furthermore, the issue of Cumulative Impact shall also be linked to:

- (a) Any material increase in the capacity of the premises
- (b) Any change in the nature of the operation of the premises where its changes include; a change to layout, inclusion and/or extension of vertical drinking, where one of the primary activities is the consumption of alcohol and/or inclusion of various forms of regulated entertainment.

- 9.4 In its Licensing Policy Statement, the Licensing Authority states that where evidence is presented to show that a particular area had reached a point where existing activity is at such a level that the granting of additional permissions would contribute to the cumulative effect, and undermine the Licensing Objectives.
- 9.5 The effect of a Cumulative Impact Policy is to create a presumption that where representations are received, that new licences and applications to vary licences by increasing the size and timescale of operation would be refused. However that policy can be re-butted by the applicant where it can be shown that the proposed change would not add to the cumulative impact being experienced.

10.0 Representations (Appendix C)

- 10.1 A full copy of all representations is included as Appendix C, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case.

<p>Interested Parties -</p> <ul style="list-style-type: none"> ➤ Councillor Steven Wallis, Ward Councillor for the area has made a representation under the prevention of public nuisance and crime and disorder licensing objective.
<p>Representations from Responsible Authorities</p> <ul style="list-style-type: none"> ➤ Fire – No representations ➤ Environmental Health Noise – Richard Fenton, Assistant Environmental Health Officer has made a representation under the prevention of public nuisance licence objective. <p style="text-align: center;">NB – Representation withdrawn subject to certain conditions being attached to the licence.</p> <ul style="list-style-type: none"> ➤ Police – Inspector Nicholas Porter of Sussex Police has made a representation under the crime and disorder licence objective. ➤ Health and Safety – No representations ➤ Planning EBC – No representations ➤ Area Child Protection – No representations ➤ Trading Standards East Sussex County Council – No representations.

- 10.2 The Applicant has tried to make contact with all parties who submitted a representation. As a result of the contact with Mr Fenton, Environmental Health, Noise, Mr Bush has agreed to the following condition being attached on his licence.

“A scheme of soundproofing of the premises shall be submitted to the Licensing Authority. No live music can commence in the main bar area until all soundproofing works have been carried out to the satisfaction of the Licensing Authority. The soundproofing works shall be maintained thereafter to the satisfaction of the Licensing Authority’.

- 10.3 This agreement has result in the representation from Mr Fenton being withdrawn. No contact was established between the applicant and Inspector Nick Porter and although contact was made with Councillor Wallis it has failed to resolve the matter, hence the case being brought to Committee.
- 10.4 Regard will be had to any history or likelihood of noise, nuisance, crime, and disorder to other matters relating to the Licensing Objectives at the site or in the vicinity of the site. The Committee may exercise their powers to impose conditions in or take action as they see fit in order to promote the Licensing Objectives.
- 10.5 In determining what, if any, conditions should be attached to a licence, these should only be attached where it is considered appropriate, to support and promote the licensing objectives. Only necessary, proportionate and reasonable licensing conditions should be imposed on a case by case basis. The Licensing Committee has previously been provided with a "Pool of Licensing Conditions," which can be attached accordingly.

11.0 Options open to the Committee

- 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, as revised. 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
- Human Rights Act 1998

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