

Body: Licensing Sub Committee
Date: 13th February 2008
Subject: Application For A New Premises Licence For the Super Pizza, 61 Seaside Road, Eastbourne.
Report Of: Karen Plympton, Licensing Manager
Ward(s) Devonshire
Purpose To determine 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 Mustafa Quraishi, for the premises known as Super Pizza, 61 Seaside Road, Eastbourne.
- 1.2 The premises is a specific and purpose equipped hot food take-away venue, with internal occasional seating, located within an established area of permanent retail and service outlets in the town centre.

2.0 The Application

- 2.1 An application for a new premises licence has been sought for the following activities:

Section L – Late Night Refreshment (indoor)

23:00 hours – 02:30 hours Monday – Sunday

Section O - Open to the public

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

2.3 Licensing Objectives

When submitting an application for a new licence under the Licensing Act 2003, the applicant is required to describe the steps, they intend to take to promote the four Licensing Objectives. The applicants' declaration can be seen on page 21 of the application form. (Appendix A).

3.0 Consultation Process

- 3.1 The Licensing Act 2003 requires applicants to advertise 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 Eastbourne Borough Council's Statement of Licensing Policy (copies previously circulated as reference material to committees. Can also be located at www.eastbourne.gov.uk/licensing.)

5.1 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, as revised, 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.

6.0 Cumulative Impact Policy

6.1 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.

6.2 Within the context of the Council's 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."

6.3 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.

6.4 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.

6.5 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.

7.0 Representations (Appendix B)

7.1 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 - ➤ None Received
Representations from Responsible Authorities
➤ Police – Inspector Wainwright of Sussex Police submitted a representation under the prevention of crime and disorder licensing objective, highlighting the level of Public Place Violent Crime (PPVC) recorded in the area and that the premises is

located in the Cumulative Impact Zone.

- 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

- 7.2 Discussions have taken place between Inspector Wainwright and the applicant's licensing consultant, Mr Bernard Hall. Further, the applicant, following receipt of the representation from Inspector Wainwright, agreed to three conditions being attached to his licence in response to concerns raised under the Cumulative Impact Policy. These conditions are enclosed within a letter addressed to Inspector Wainwright, attached as Appendix C. However, this has failed to resolve the matter, see Appendix D, hence the case being brought to Committee.
- 7.3 The applicant, through his licensing consultant has submitted further information, see Appendix E, for the Committee in an aim to assist with the decision making process.
- 7.4 Regard will be had to any history or likelihood of noise, nuisance, crime and disorder at the site or in the vicinity of the site. Further, the Committee may consider other matters that may negatively impact upon the Licensing Objectives. The Committee may exercise their powers to impose conditions, or take the appropriate action as they see fit in order to promote the Licensing Objectives.
- 7.4 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 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.

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 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

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.

10.0 Human Rights

10.1 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.

11.0 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