

Body: Licensing Sub Committee
Date: 24th March 2009
Subject: Application for Variation of Premises Licence for Vina Kebabs, 24 Seaside Road, Eastbourne.
Report Of: Karen Plympton, Licensing Manager
Ward(s) Devonshire
Purpose To determine a new premises licence under the Licensing Act 2003.
Contact: Karen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937
E-mail address karen.plympton@Eastbourne.gov.uk

1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council's, Licensing Team, for the premises known as Vina Kebabs.
- 1.2 The premise is a food outlet that includes a sit down eating area and take away service. It currently has a premises licence issued under the Licensing Act 2003 for the sale and supply of late night refreshment, hot food, between the hours of 2300 hours - 0000 hours, and being open to the public between 1100 -0000 hours.

2.0 The Application

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

Section L – Late Night Refreshment (indoor and outdoor)

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

Section O - Open to the public

11:00 hours – 03:00 hours Monday – Sunday

3.0 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, included at Appendix 1.

4.0 Consultation Process

- 4.1 The Licensing Act 2003 requires applicants to advertise both on the premises and in a local newspaper to inform the public of the variation 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.

5.0 The Decision Making Process

The Licensing Objectives

5.1 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

6.0 Eastbourne Borough Council's Statement of Licensing Policy

Copies previously circulated as reference material to committees and can also be viewed 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, Section 182 Guidance issued in respect of the Licensing Act 2003, as revised, and the promotion of the 4 Licensing Objectives.

6.1 (A) 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.

6.2 (B) 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.

6.3 (C) 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.

6.4 (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 Cumulative Impact Policy

7.1 The premises in question is situated within the Council's designated Cumulative Impact Zone. This Policy has been included in the report at Appendix 2. It can also be found at www.eastbourne.gov.uk/council/meeting/cabinet.

7.2 The Cumulative Impact Policy was agreed by Full Council in July 2007, and subsequently re-visited and amended when the Licensing Policy Statement was reviewed and agreed by Full Council on 16th January 2008.

7.3 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."

7.4 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.*

7.5 It goes on the state

"the concentration, location and operating patterns of late night refreshment establishments may also undermine the promotion of the Licensing Objectives. Special consideration will also therefore be given to applications for late night refreshment premises seeking to trade between 11.00pm – 5.00am.

7.6 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.

7.7 The effect of a Cumulative Impact Policy is to create a presumption that where representations are received, new licences and applications to vary licences by increasing the size and timescale of operation would be refused.

7.8 However that policy can be re-butted by the applicant where it can be demonstrated by the applicant that the proposed change will not add to the cumulative impact being experienced.

8.0 Representations

8.1 A full copy of all representations is included in Appendix 3, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case.

Interested Parties

- Councillor S Wallis, Devonshire Ward, makes a representation based upon noise, nuisance and anti-social behaviour in the area. He expresses concern about the likely impact upon residents in the area if the application is granted. He make representations under the Prevention of Public Nuisance and the Prevention of Crime and Disorder Objectives.

Representations from Responsible Authorities

- Police – A representation has been received under the Crime and Disorder Licensing Objective. Mr A Masters, Licensing Officer has requested that the terminal receipt of orders for late night refreshment be limited to 02:30 hours to allow patrons adequate time to purchase and consume beverages and to leave the premises before 03:00 hours. Furthermore, that the CCTV equipment at the premises be upgraded to a standard Police specification.
- 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

8.2 No response has been received from the applicant in connection to the representations lodged.

8.3 However, Mr Ibrahim has lodged a petition in support of his application, attached as appendix 4. Save for the name of the signatory name, the details have been concealed due to data protection, but are available for the Committee to view on request.

9.0 Matters to Consider

9.1 The Sub Committee will need to have due regard to the following:

- Representations received
- The Cumulative Impact Policy and whether the applicant has offered evidence to depart from this Policy

- 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.
- Consideration of any other matters that may negatively impact upon or conversely, promote the Licensing Objectives.
- The Councils Statement of Licensing Policy
- Guidance issued under Section 182 of the Licensing Act 2003 (As revised in June 2007)

The Sub Committee may exercise their powers to impose conditions, or take the appropriate action as they see fit in order to promote the Licensing Objectives.

In determining what, if any, conditions should be attached to a licence, these should only be attached where it is considered appropriate and necessary 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.

10.0 Options Open To The Panel

- 10.1 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, as revised in 2007, and Eastbourne Borough Councils Statement of Licensing Policy has been provided to the Licensing Committee as reference material.
- 10.2 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

11.0 Legal Considerations

- 11.1 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, the Cumulative Impact Policy and the wider requirements of the Licensing Act 2003.

12.0 Human Rights

- 12.1 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.

13.0 Background Material

- Licensing Act 2003
- LACORS Guidance – Committee Hearings
- Section 182 Statutory guidance to the Licensing Act 2003
Hearing and Regulations Guidance
- Eastbourne Borough Council Licensing Statement 2008
- Human Rights Act 1998

clm/committee report