

**Body:** Licensing Sub Committee  
**Date:** 27<sup>th</sup> April 2009  
**Subject:** Application for Variation of Premises Licence for Indigo, 131 - 135 Seaside Road, Eastbourne.  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)** Devonshire  
**Purpose** To determine an application to vary the premises licence under the Licensing Act 2003.  
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## **1.0 Introduction & Background**

- 1.1 An application has been received by Eastbourne Borough Council's, Licensing Team, for the premises known as Indigo, 133-135 Seaside Road, Eastbourne. In addition to the sale and supply of alcohol, the premise provides dance performances of an adult nature in the form of fully nude entertainment, open to persons over the age of eighteen.
- 1.2 The premise already has a licence which enables it provide the sale by retail sale of alcohol, live and recorded music, performances of dance and facilities dancing. A copy of the current licence is included at Appendix 1.
- 1.3 The schedule detailing the type and timings of licensable activities can be seen in Schedule B which forms part of the current premises licence. The conditions currently in place and the Operating Schedule are included within the terms and conditions of the licence.

## **2.0 The Variation Application**

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

### **Section E – Live Music (Indoors)**

00:00 hours – 23:59 hours Monday – Sunday

### **Section F - Recorded Music (Indoors)**

00:00 hours – 23:59 hours Monday – Sunday

### **Section G - Performances of Dance (Indoors)**

00:00 hours – 23:59 hours Monday – Sunday

### **Section J – Provision of Facilities for Dancing (Indoors)**

00:00 hours – 23:59 hours Monday – Sunday

## **Section M – Supply of Alcohol (On the Premises)**

00:00 hours – 23:59 hours      Monday – Sunday

## **Section O – Hours Premises are Open to the Public**

00:00 hours – 23:59 hours      Monday – Sunday

- 2.2 The variation does not seek to alter the form of its current operating schedule and seeks to retain existing conditions attached to the licence if the variation is granted.

### **3.0. Licensing Objectives**

- 3.1 When submitting an application for a variation to a premises licence under the Licensing Act 2003, the applicant is required to describe the steps they intend to take to promote the four Licensing Objectives.
- 3.2 The applicant seeks to retain the original terms and conditions aligned to the existing licence, and if granted, these terms will be included on any variation if approved.

### **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 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 committee. It can also be located at [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing).**

- 6.1 Whilst each application will be considered on its merits, the Licensing Committee will have due regard of the Eastbourne Borough Council’s Statement of Licensing Policy, Section 182 Guidance issued in respect of the Licensing Act 2003, as revised, and the promotion of the 4 Licensing Objectives.

## 6.2 **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.

## 6.3 **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.

## 6.4 **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.

## 6.5 **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.

## 7.0 **Cumulative Impact Policy**

7.1 The premises in question is situated within the Council's designated Cumulative Impact Policy Zone. This has been circulated separately to members of the Sub-Committee and can be found at [www.eastbourne.gov.uk/council/meeting/cabinet](http://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 further agreed when the Licensing Policy Statement was reviewed and agreed by Full Council on 16<sup>th</sup> 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 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.
- 7.6 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.
- 7.7 However the 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. Members will need to ensure that they have heard evidence from the applicant to depart from the Cumulative Impact Policy.

## **8.0 Representations**

- 8.1 A full copy of all representations received is included in Appendix 2, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case. A map indicating the location of residents as "interested parties" is included.

### **Representations From "Interested Parties"**

- Hurst Spring Holdings Ltd, Freeholder for the building has made a representation under the prevention of public nuisance licensing objective.
- Sebastian Guest, as a person living in the vicinity of the premises makes a representation under the prevention of public nuisance licensing objective.
- Councillor Wallis, Ward Councillor, has makes a representation under the prevention of public nuisance and crime and disorder licensing objectives.
- K. Mitchell has makes a representation as a person living in the vicinity of the premises, under the prevention of public nuisance licensing objective.
- Grace McNee makes a representation as a person living in the vicinity of the premises, under the prevention of public nuisance licensing objective.
- Nigel Hollick makes a representation as a person living in the vicinity of the premises, under the prevention of public nuisance licensing objective.
- Cameron Muir is the Managing Agent for The Colonnades and makes a representation as a person carrying out a business in the vicinity of the premises under the prevention of public nuisance licensing objective.
- Adrian Ley is the Chairman of Pevensey Road Neighbourhood Association and makes a representation on behalf of persons living in the vicinity of the premises and has made a representation on behalf of the Association under the prevention of public nuisance

licensing objective.

- The residents of Flats 329, 432, 230, 215, 134, and 426, The Colonade, Colonade Gardens make representations as persons living in the vicinity of the premises under the prevention of public nuisance licensing objective.
- Councillor Beryl Healy makes a representation as the County Councillor for the area, under the prevention of public nuisance and crime and disorder licensing objectives.
- Mr Walters makes a representation as a person who lives in the vicinity of the premises under the prevention of public nuisance and the prevention of crime and disorder licensing objectives.

### **Representations from Responsible Authorities**

- Sussex Police. A representation has been received from Mr A Masters. Police Licensing Officer & Inspector J Williams. They highlight that the premises is located within the Cumulative Impact Zone, and state that if granted, the application would undermine the prevention of crime and disorder and prevention of public nuisance licensing objectives.
- Eastbourne Borough Council Planning Department  
Mr A Battams of Eastbourne Borough Councils Planning Department under the prevention of public nuisance licensing objective
- Health & Environment Team – Noise, Eastbourne Borough Council.  
Mr A Albon of Eastbourne Borough Councils Noise Team makes a representation under the prevention of public nuisance licensing objective.
- Trading Standards East Sussex County Council – No representations
- Fire – No representations
- Health and Safety – No representations
- Area Child Protection – No representations

8.2 No written response has been received from the Applicant, Mr Valls in relation to the representations received.

## **9.0 Matters to Consider**

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

- Evidence from the Applicant in support of the variation application
- Representations received from “interested parties,” and Responsible Authorities.
- The Cumulative Impact Policy and whether the Applicant has offered satisfactory 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)

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

9.3 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.

9.4 Only necessary, proportionate and legally enforceable conditions should be imposed on a case by case basis.

9.5 The Licensing Sub Committee has previously been provided with a "Pool of Licensing Conditions," which can be attached accordingly.

9.6 Furthermore, Members will need to consider conditions that may have been suggested by the Applicant, Responsible Authority and/or "interested parties," as a means to promote the Licensing Objectives.

#### **10.0 Options Open To The Sub Committee**

10.1 The Sub Committee must consider all evidence submitted and have regard for the Eastbourne's Statement of Licensing Policy, and statutory guidance issued under Section 182 of the Licensing Act 2003.as revised in 2007 and other matters as considered relevant.

10.2 The Sub Committee must take the following steps it considers necessary for the promotion of the Licensing Objectives:-

- a) Grant the application in full as requested
- b) Grant the application but modify it by altering hours or activities, adding conditions, or omitting parts as considered 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 Sub Committee must have due regard for the Council's Statement of Licensing Policy, the Cumulative Impact Policy, any evidence submitted by relevant parties 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 as revised  
Hearing and Regulations Guidance
- Eastbourne Borough Council Licensing Statement 2008
- Human Rights Act 1998