

Body: Licensing Sub Committee
Date: 10th August 2009
Subject: Application For New Premises Licence For Sambar, 32-34 Terminus Road, Eastbourne.
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Devonshire Ward
Purpose To determine an application for 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 Eastbourne Borough Council's, Licensing Team, for the premises known as Sambar, 32-34 Terminus Road, Eastbourne.
- 1.2 The application proposes the grant of a new licence at the premises, with the intention of providing a late night venue including; regulated entertainment, late night refreshment and the sale/supply of alcohol.

2.0 The Application

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

Section E - Live Music - Indoors

19:00 hours – 02:30 hours Friday – Saturday
19:00 hours – 01:00 hours Sunday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section F - Recorded Music - Indoors

09:00 hours – 01:00 hours Monday – Thursday & Sunday
09:00 hours – 02:30 hours Friday & Saturday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section G – Performances of Dance - Indoors

09:00 hours – 01:00 hours Monday – Thursday & Sunday
09:00 hours – 02:30 hours Friday & Saturday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section I – Provision of facilities for Making Music Indoors

09:00 hours – 01:00 hours Monday – Thursday & Sunday
09:00 hours – 02:30 hours Friday & Saturday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section J – Provision of facilities for Dancing Indoors (Dance Floor on First Floor)

09:00 hours – 01:00 hours Monday – Thursday & Sunday
09:00 hours – 02:30 hours Friday & Saturday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section L – Late Night Refreshment - Indoors

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

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section M – Supply of Alcohol - On & Off the premises

10:00 hours – 01:00 hours Monday – Thursday & Sunday
10:00 hours – 02:30 hours Friday & Saturday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

Section O – Hours Premises Open to the Public

09:00 hours – 01:30 hours Monday – Thursday
09:00 hours – 03:00 hours Friday - Sunday

New Years Eve – New Years Day from the end of permitted hours on 31st December to the start of licence hours 1st January.

3.0 Licensing Objectives

- 3.1 When submitting a new premises licence under the Licensing Act 2003, the applicant is required to describe any further steps; they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The applicants' declaration can be seen on page 14 of the application form. This is included at Appendix 1, along with the plan of the premises.

4.0 Consultation Process

- 4.1 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. In this instance, 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 Sub Committee must act to promote the four Licensing Objectives. All carry equal weight as part of the process. The licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

6.0 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

- 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.

The Prevention Of Crime and Disorder

Eastbourne Borough Council's 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.

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.

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.

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 and can be found at: www.eastbourne.gov.uk/council/meeting/cabinet.

7.2 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."

7.3 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/proposals 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.

7.4 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.

7.5 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

8.0 Representations

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

Interested Parties

- No representation

Representations from Responsible Authorities

- **Sussex Police** – A representation (see appendix 2) has been received from Inspector Rachel Barrow, Sussex Police Licensing Officer under the Licensing Objective, prevention of crime and disorder relating to the cumulative impact policy as included in the attached correspondence. **At the time of writing this report, negotiations are ongoing between Sussex Police and the applicants.**
- **Environmental Health Department - Noise**
Representation received from Mr A Albon on the grounds of the prevention of public nuisance. Withdrawn subject to conditions being included on the licence as detailed in 8.2 of this report.
- Fire – No representations
- Health and Safety Department – No representations
- Planning Department – No representations
- Area Child Protection Team – No representations
- Trading Standards East Sussex County Council – No representations

8.2 Mr A Albon has withdrawn a representation subject the following conditions:

- Regular checks outside the premises and general area to ensure no noise nuisance is likely to be caused to residents in the vicinity
- All windows and doors should be kept shut when all other forms of regulated entertainment are taking place, except for background music, other than for access/egress to and from the premises
- Any sound system used should allow full control of the music output
- Any designated smoking area should be monitored by staff to control the levels of noise from people using it. Ensuring no nuisance is caused to residents in the vicinity from loud talking or shouting.

8.3 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. In addition, issues impacting upon public safety and strategies to protect children from harm need to be considered

8.4 The Sub Committee may consider other matters that may negatively impact upon the Licensing Objectives. It may exercise their powers to impose conditions, or take the appropriate action as they see fit in order to promote the Licensing Objectives.

8.5 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 conditions should be imposed on a case by case basis.

- 8.6 The Licensing Committee has previously been provided with a "Pool of Licensing Conditions," which can be attached accordingly. The Applicant and/or Responsible Authorities may also suggest conditions to address concern and promote the Licensing Objectives.

9.0 Options Open To The Sub Committee

9.1 The Sub Committee must have regard to the following:

- The Local Authority Licensing Statement
- Statutory guidance as amended under Section 182 of the Licensing Act 2003.
- Eastbourne Borough Councils Licensing Statement has been provided to the Licensing Committee as reference material.
- Eastbourne Borough Council's Cumulative Impact Policy
- Representations from the Premises Licence Holder and/or the Designated Premises Supervisor
- Representations from any Responsible Authority
- Representations from "Interested Parties."

9.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:

- Grant the application in full as requested
- Grant the application but modify it:
 - by altering hours or activities
 - Adding conditions, or
 - Omit parts as necessary for the promotion of the licensing objectives.
- Reject the whole or part of the application

10.0 Legal Considerations

10.1 The framework for the issue, variation and/or modification to applications made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the 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.

11.0 Human Rights

11.1 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.

12.0 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

sambar/committee report