

Body: Licensing Act Sub Committee
Date: 10th August 2009
Subject: Funktion Rooms, 2a-2b Pevensey Road, Eastbourne.
Expedited Summary Review of Premises Licence
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Devonshire
Purpose Consider an application by Sussex Police for an expedited summary review under Section 53 C of the Licensing Act 2003 at the premises known as the Funktion Rooms, 2a-2b Pevensey Road, Eastbourne.
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1.0 Legislative Provision

- 1.1 A new procedure for the expedited summary review of a premises licence was inserted at Section 53A of the Licensing Act 2003 by Sections 21 and 22 of the Violent Crime Act 2006, and came into force on 1st October 2007.
- 1.2 The new powers only apply where a premises licence authorises the sale of alcohol.
- 1.3 The provisions allow a quick process for attaching interim conditions to a licence and a fast track licence review when the Police consider that the premises concerned is associated with serious crime or disorder, or both.
- 1.4 It also enables the Licensing Authority to respond by taking interim steps quickly where it is considered appropriate, pending a full review of the premises licence.

2.0 Background

- 2.1 A process flow chart detailing the stages to be followed by Sussex Police and Eastbourne Borough Council, along with the guidance issued by the Department of Culture, Media and Sport in relation to expedited summary reviews is included at Appendix 1.
- 2.2 On Wednesday 15th July 2009, the Council received an application from Sussex Police seeking an expedited/summary licence review under the Licensing Act 2003, as amended by the Violent Crime Act 2006 in relation to the premises known as the Funktion Rooms, 2a-2c Pevensey Road, Eastbourne. A copy of the suspended premises licence is included at Appendix 7.
- 2.3 Chief Superintendent Antony Blaker of Sussex Police submitted the certificate, application and supporting documentation for a full review of the premises licence, dated 14th July 2009, served on the Licensing Authority by Inspector Vivien Johnson on the morning of Wednesday 15th July 2009.

- 2.4 This certificate stated that in his opinion the premises are associated with serious crime.
- 2.5 A copy of the documentation submitted by Sussex Police which forms part of the expedited summary review application is attached to the report at Appendix 7.
- 2.6 On receipt of the application and certificate, the Licensing Authority must, within 48 hours, consider whether it is necessary to take interim steps pending determination of the full review of the premises licence. This meeting took place on Thursday 16th July 2009.
- 2.7 In addition to Members, the Council's Licensing Manager and Lawyer to the Council, the premises licence holder, Madasco Trading LLP and representatives of Sussex Police were in attendance at this meeting and made representations accordingly.
- 2.8 At the meeting on the 16th July 2009, Members decided that as an interim step, with immediate effect, the premises licence issued under the Licensing Act 2003 be suspended pending the full review hearing, scheduled for 10th August 2009.
- 2.9 A copy of the Decision Notice in relation to the hearing on the 16th July is included at Appendix 2.
- 2.10 Following the decision on 16th July 2009, the premises licence holder made representations against the interim steps taken by the Licensing Authority at that stage.
- 2.11 A hearing was held on 23rd July 2009 to consider the representations made by the premises licence holder against the decision to immediately suspend the licence as an interim step pending the determination of the review of the premises licence.
- 2.12 Supplementary information was submitted by the premises licence holder as part of their representations. This is included at Appendix 3.
- 2.13 Members upheld the original decision to suspend the premises licence. A copy of the Decision Notice is included at Appendix 4.

3.0 Relevant Representations by Responsible Authorities & Interested Parties

- 3.1 As the Sub Committee are aware, Sussex Police have already submitted representations following the application for an expedited summary review.
- 3.2 In accordance with the provisions and procedure laid down in the Licensing Act 2003, a Public Notice of the application detailing the review of the premises licence, together with the grounds for such, was advertised on site at the premises, in a location where it could be clearly seen by members of the public.
- 3.3 Notice of the application was also placed in a prominent position at 1 Grove Road, Eastbourne and within the Public Information Display Board at Eastbourne Town Hall. In addition to the statutory provisions, notice of the

application was also posted on the website of Eastbourne Borough Council at www.eastbourne.gov.uk/licensing. A copy of the review application was also served on all of the Responsible Authorities.

- 3.3 No representations have been made by any other Responsible Authority or "interested party" as defined by the Licensing Act 2003.
- 3.4 Prior to the Review meeting, the purpose of today's meeting, the premises licence holder and representatives from Sussex Police have met informally to try and discuss matters relating to the summary review. At the time of writing this report, it is understood that no agreement has been reached between the parties.
- 3.5 No further information has been submitted by the Premises Licence holder other than that included at Appendix 3.
- 3.6 Sussex Police, in addition to information submitted as part of the original application for the expedited summary review have submitted some further information. This is included as part of the body of evidence at Appendix 7.
- 3.7 Representations have also been received from Richard Fowler Fire Safety Manager, East Sussex Fire and Rescue Service. A copy of their representation and supporting documentation is included at Appendix 5.
- 3.8 A representation has also been received by Mr Adrian Ley, Chairman of Pevensey Road Residents association on behalf of residents living in the vicinity. A copy of the representation is included at Appendix 6.

4.0 The Review Hearing

- 4.1 The purpose of the hearing today, 10th August 2009, is for the Sub Committee to:
 - Consider the application for the review of the premises licence and any relevant representations made;
 - Consider what steps are necessary for the promotion of the Licensing Objectives:
 - The prevention of crime and disorder;
 - The prevention of public nuisance;
 - Public safety and;
 - The protection of children from harm.
- 4.2 Members need to consider the steps that should be taken to secure the promotion of the Licensing Objectives. The steps the Sub Committee can take are:
 - i) The modification of the conditions of the premises licence;
 - ii) The exclusion of a licensable activity from the scope of the licence;
 - iii) The removal of the designated premises supervisor from the licence;

- iv) The suspension of the licence for a period not exceeding three months;
or
 - v) The revocation of the premises licence.
- 4.3 Once a decision has been reached regarding the full review application, any interim steps imposed cease to have effect, except in those circumstances where any interim steps form part of the determination of the review application.
- 4.4 For the purposes of i) above, the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added.
- 4.5 There are mandatory requirements for the conditions to be added to premises licences where the licensable activities include the sale of alcohol, the provision of door staff or the provision of film exhibitions and these statutory provisions cannot be compromised when consideration is given to the modification of the conditions of the premises licence.
- 4.6 Members should also be aware that the Act provides that where a decision is reached either to modify the conditions of a premises licence or exclude a licensable activity from the scope of the licence, the Committee may provide that such modification or exclusion is to have effect only for a specified period but this must not exceed a maximum period of three months.

5.0 Considerations

- 5.1 When determining the application for review of the premises licence, the Sub Committee must have regard to the following.
- The promotion of the licensing objectives;
 - The Licensing Act 2003;
 - Eastbourne Borough Council's Statement of Licensing Policy
 - The representations, including any supporting information, presented by the following in respect of the application:
 - The Premises Licence Holder
 - Sussex Police as a Responsible Authority
 - East Sussex Fire and Rescue Service as a Responsible Authority.
 - Representation from Adrian Ley, Chairman of Pevensey Road Residents Association on behalf of residents living in the vicinity of the premises.
 - Eastbourne Borough Council's Statement of Licensing Policy
 - Statutory guidance issued by the Secretary of State in accordance with Section 182 of the Licensing Act 2003 as revised in June 2007. This provides advice in relation to the consideration of review applications and offers the following guidance.

6.0 Legal Considerations

- 6.1 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore beyond the direct control of the individual, club or business to which the licence, certificate or authorisation relates.
- 6.2 Licensing is about the appropriate management and control of licensed premises, qualifying clubs and temporary events and the associated licensable activities governed by the Licensing Act 2003. Any conditions attached to licences, certificates and permissions will focus on matters which are within the control of the Designated Premises Supervisor and/or their nominated representative, and will centre on the premises themselves and their immediate vicinity.
- 6.3 When considering these terms and conditions the Sub Committee will primarily focus on the direct impact of the activities taking place at the licensed premise on those frequenting the site as well as members of the public living, working or engaged in activity in the area concerned, in addition to the promotion of the Licensing Objectives. .

7.0 Human Rights

- 7.1 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.

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 2008
- Human Rights Act 1998
- DCMS Guidance in relation to Expedited Summary Review
Process

Appendix List

- Appendix 1** DCMS Guidance Expedited Summary Reviews Including copy of Process Chart
- Appendix 2** Decision Notice Following Meeting on 16th July 2009
- Appendix 3** Representations submitted by Premises Licence Holders Solicitors 23rd July 2009
- Appendix 4** Decision Notice Following Meeting on 23rd July 2009
- Appendix 5** East Sussex Fire and Rescue Service Representation
- Appendix 6** Representation from Pevensey Road Residents Association.
- Appendix 7** Sussex Police – Certificate and Supporting Evidence submitted 15th July 2009 and schedule of Police Incidents submitted at meeting on 16th July 2009 and further evidence submitted on 29th July 2009 (exempt information)