

Body: Licensing Sub Committee
Date: 28th October 2009
Subject: Application For a variation to a Premises Licence For French's Deux, Bolton Road, Eastbourne.
Report Of: Karen Plympton, Licensing Manager
Ward(s) Devonshire
Purpose To determine an application for a variation to a 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 French's Deux, Bolton Road, Eastbourne.
- 1.2 The premises were originally called the Townhouse, and recently had a change of name and ownership. The applicant is seeking to extend their current hours for opening to the public, sale of alcohol and recorded music.

2.0 The Application

- 2.1 An application for a variation to the current premises licence under the Licensing Act 2003 has been sought for the following activities:

Section F – Recorded Music (Indoors)

1000 – 0200 hours Monday – Saturday
1200 – 0000 hours Sunday

New Years Eve – New Years Day in accordance with the Regulatory Reform (special occasions) Order 2002. From the end of permitted hours to the start of permitted hours the following day.

Section M – Supply of Alcohol (Both on and off the Premises)

1000 – 0200 hours Monday – Saturday
1200 – 0000 hours Sunday

New Years Eve – New Years Day in accordance with the Regulatory Reform (special occasions) Order 2002. From the end of permitted hours to the start of permitted hours the following day.

Section O – Open to the Public

1000 – 0230 hours Monday – Saturday
1200 – 0030 hours Sunday

New Years Eve – New Years Day in accordance with the Regulatory Reform (special occasions) Order 2002. From the end of permitted hours to the start of permitted hours the following day.

3.0 Licensing Objectives

- 3.1 When submitting an application for a variation 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 at Section P of the application form. The applicant has also included further information in support of his application, included at Appendix 1.
- 3.2 A layout plan of the premises and map indicating the location of "interested parties" is included at Appendix 2.

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 Councils designated Cumulative Impact Policy Zone. This has been circulated separately and can be found at www.eastbourne.gov.uk/licensing.

7.2 Within the context of the Councils 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 include: a change in hours, alterations 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.
- 7.6 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

- David Mitchell on behalf of Sherwood Court Residents Association as persons that live in the vicinity of the premises. Representations are made under the prevention of crime and disorder licensing objective.
- Councillor Wallis submitted a representation as ward Councillor under the crime and disorder objective. This has now been withdrawn.

Representations from Responsible Authorities

- Sussex Police – Representations received under Crime and Disorder and Prevention of Public Nuisance Licensing Objectives. The premises is located in the Cumulative Impact Zone and provides the basis of the Police representation. An original agreement was reached with Sussex Police for the following hours: Opening hours: 1000 – 0200 Monday – Saturday, 1200 – 0030 Sunday and Sale of Alcohol: 1000 – 0130 Monday – Sunday. However, this has been retracted by Force Licensing and Public Safety Manager, Jean Irving. Further details can be found at Appendix 3.
- Health and Environment Noise Team. A representation was lodged by Mr Adrian Albon , Environmental Health Technician under the prevention of public nuisance objective, but has subsequently been withdrawn subject to the following being attached to the premises licence if granted:
 - Regular noise 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 forms of regulated entertainment are taking place, except for background music, other than for access/egress to/from the premises.
 - All forms of regulated entertainment should allow full control of music output and should be played through a sound limiter.
- East Sussex Fire and Rescue Service – No representations

- Council Health and Safety Department – No representations
- Council Planning Department– No representations
- East Sussex Area Child Protection Team– No representations
- Trading Standards East Sussex County Council – No representations

8.2 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

8.3 The Sub 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.

8.4 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.

8.5 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.
- The premises is located in the designated Cumulative Impact Zone, and as such, creates a re-buttable presumption to refuse the application unless the applicant can demonstrate that the matter will not add to existing problems or undermine the Licensing Objectives.
- Eastbourne Borough Councils Licensing Statement has been provided to the Licensing Committee as reference material.
- 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 Sub Committee must have due regard for the Eastbourne Licensing Policy 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.

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