

Body: Licensing Sub Committee
Date: 9th December 2010
Subject: Application For a New Premises Licence For Leaf Hall Community Arts Centre, 51 Seaside, Eastbourne
Report Of: Karen Plympton, Licensing Manager
Ward(s) Meads
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 Leaf Hall Community Arts Centre, 51 Seaside, Eastbourne.
- 1.2 The premises is currently used as a centre for performing arts, dance and community activities. It is hoped that the venue will extend its activities, focussing on provision for young people and the wider community.

2.0 The Application

- 2.1 An application for grant of a new premises licence under the Licensing Act 2003 has been sought for the following activities:

Section A – Plays (Indoors only)

Monday – Sunday: 10:00 – 23:00

Section B – Films (Indoors only)

Monday – Sunday: 10:00 – 23:00

Section E – Live Music (Indoors only)

Monday – Sunday: 12:00 – 23:00

Section F – Recorded Music (Indoors only)

Monday – Sunday: 09:00 – 00:00

Section G – Performances of Dance (Indoors only)

Monday – Sunday: 09:00 – 23:00

Section H – Anything of a similar description to that falling within(e), (f) or (g) (Indoors only)

Monday – Sunday: 12:00 – 23:00

Section I – Provision of facilities for making music (Indoors only)

Monday – Sunday: 10:00 – 22:00

Section J – Provision of facilities for dancing (Indoors only)

Monday – Sunday: 09:00 – 00:00

Section K – Provision of facilities for entertainment of a similar description to that falling within (i) or (j) (Indoors only)

Monday – Sunday: 09:00 – 00:00

Section L – Late Night Refreshment (Indoors only)

Monday – Sunday: 23:00 – 00:00

Section M – Supply of Alcohol (On the Premises only)

Monday – Tuesday: 12:00 – 23:30

Wednesday – Thursday: 12:00 – 23:00

Friday – Sunday: 12:00 – 23:30

Section O – Open to the Public

Monday – Sunday: 0900 – 00:00

3.0 Licensing Objectives

- 3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe any steps; they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The Operating Schedule detailing these steps can be found at Section P of the application form. This is included at Appendix 1.
- 3.2 In the Operating Schedule, Ms Leonard, the applicant, details the measures proposed to promote the Licensing Objectives.
- 3.3 A layout plan of the premises 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” have also been consulted as part of the process, allowing a consultation period of 28 days for representations to be made.
- 4.2 The Licensing Team received representations regarding the visibility of the blue site notice, which was displayed in a raised window. It could be argued that this was not “in a place where it could be clearly seen by the public.”
- 4.3 In light of this, the Licensing Team required that, in addition to the aforementioned windows, the site notice be re-displayed at the entrance to the premise. The consultation period was extended to take account of this discrepancy, and allowed a longer period for representations to be made. Ms Leonard, the applicant will be present at the hearing to address Members on this point should the need arise.

4.4 As a result of the consultation process, 3 representations have been received. These are detailed at Section 7 of the report.

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 & Section 182 Guidance, Licensing Act 2003

6.1 Copies of the Council's current Statement Of Licensing Policy have previously been circulated to Members. A copy is also retained in the Members Room or can be downloaded from www.eastbourne.gov.uk/licensing.

6.2 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Statement Of Licensing Policy and , Section 182 Guidance issued by the Department of Culture, Media and Sport, revised in January 2010, and must act to promote of the 4 Licensing Objectives.

6.3 Eastbourne Borough Council's Statement Of Licensing Policy outlines the matters the Authority will consider when determining matters under the Licensing Act 2003. An overview appears below.

6.4 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.

6.5 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.

6.6 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.

6.7 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 Representations

- 7.1 Ms Leonard, applicant will be in attendance to address any matters Members may wish to raise.
- 7.2 Councillor Nigel Goodyear, Meads Ward also advised the Licensing Manager within the relevant consultation period that he wished to address Members on the merits of the application. He will also be in attendance.
- 7.3 A copy of all valid representations is included at Appendix 3, however a summary appears below.
- 7.4 Representations from "interested parties," persons living in the vicinity of the premises have been included, and invited to attend the hearing to address Members.
- 7.5 Mr Adrian Albon acting on behalf of a Responsible Authority, namely the Health and Environment Noise Team of Eastbourne Borough Council has also made representations. He will be in attendance at the Sub Committee.

Interested Parties

There have been two representations in total from residents "living in the vicinity," Their residential premises adjoin the Leaf Hall premises.

- Mr King makes representations under the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm Licensing Objectives
- Ms Connell makes a representation under the prevention of public nuisance Licensing Objectives.

Mr King has indicated that he will be speaking on behalf of himself and Ms Connell. He is being represented by Mr Rodney Warren of Rodney Warren Solicitors, Eastbourne.

Representations from Responsible Authorities

- **Sussex Police** – No representations
- **Eastbourne Borough Council Environmental Health Department – Health and Environment Noise Team**

A representation has received from Mr Adrian Albon of the Council's Health and Environment (Noise) Team under the prevention of public nuisance Licensing Objective.

Initially, two conditions put forward by Mr Albon for consideration by applicant, Ms Leonard. These are:

- "No amplified music or speech should be performed until a noise limiter has been installed, and sound levels agreed and set in conjunction with the Health and Environment Noise Team of Eastbourne Borough Council." and
- "Regular checks outside the premises should be made and noise levels checked. This is to ensure no noise nuisance is caused to persons in neighbouring properties."

A further condition has been suggested, following a site visit to the premises by Mr Albon, Noise Officer and Ms Stapleford, Licensing Officer:

- "An acoustic survey should be carried out by a suitably qualified acoustic engineer and any work carried out in accordance with its recommendations, to ensure no noise nuisance will be caused to occupants of the residential properties in the vicinity."
 - **East Sussex Fire and Rescue Service** – No representations.
 - **Eastbourne Borough Council Health and Safety Department** – No representations
 - **Eastbourne Borough Council Planning Department**– No representations
 - **Area Child Protection Team**– No representations
 - **Trading Standards (East Sussex County Council)** – No representations

7.6 Ms Leonard, applicant has advised the Licensing Team that the Leaf Hall Trust agree to the imposition of conditions on the premises licence, if granted, as required by Eastbourne Borough Councils Health and Environment (Noise) Team.

7.7 Ms Leonard also advises that she is keen to work with those making representations, and is keen to find a resolution so that the premises licence can be granted. A further meeting was held between Ms Leonard, Mr Albon and Ms Plympton, Licensing Manager to consider the outcome of an Acoustic Report and further feedback from the Solicitors acting on behalf of Mr King, an interested party. A copy of the Acoustic report is included at Appendix 4.

7.8 The following conditions have been put forward by Ms Leonard, in conjunction with Mr Albon and Ms Plympton as suggested measures to promote the Licensing Objectives:

- An earlier terminal hour of 10pm. This does not preclude Ms Leonard from applying for the 12 Temporary Event Notices which could result in later closing on an ad hoc basis.
- No more than 5 persons to be permitted outside at any one time to smoke. The designated smoking area shall be restricted to the area adjacent to the front door of the premises, on Seaside
- Save for access and egress, the internal lobby door shall be kept closed at all times in order to minimise noise breakout.
- No regulated entertainment, including amplified music or speech should be performed at the premises until a noise/sound limiting device has been fully installed. The levels of this device shall be agreed and set, with the Councils Manager of the Health and Environment (Noise) Team or their nominated representative.
- The Designated Premises Supervisor or their nominated representative shall undertake regular checks outside of the premises to monitor noise levels to ensure no noise nuisance caused to persons in neighbouring properties.
- An acoustic report will be carried out by a qualified acoustic engineer and its recommendations acted upon before any regulated entertainment takes place.
- The premises will also act on and implement the reasonable requirements of the Health and Environment (Noise) Manager or their nominated representative in relation to the prevention of noise and nuisance from the premises and its direct vicinity.

7.9 Members will be aware that the Sub Committee Hearing was adjourned from the 23rd November 2010, to allow for a mediation meeting to take place between all parties. At the time of writing this report, the mediation meeting scheduled for the 7th December 2010 has yet to be held, however it is hoped that some progress will be made in anticipation of the meeting on the 9th December 2010.

8.0 Further Considerations

- 8.1 Each application will be considered on its own merits. The Sub Committee will need to have regard will be had to any history or likelihood of noise, nuisance, crime and disorder at the premises, or in the vicinity of the premises.
- 8.2 In addition, matters impacting upon public safety, and strategies to protect children from harm will need to be considered.
- 8.3 The Sub Committee may also consider any other matters that it believes may negatively impact upon the promotion of the Licensing Objectives.
- 8.4 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.
- 8.5 In determining what, if any, conditions should be attached to a premises licence, these should only be imposed where it is considered necessary, proportionate and reasonable.
- 8.6 The Licensing Sub Committee has previously been provided with a "Pool of Licensing Conditions," which can be attached accordingly.

8.7 The applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

9.0 Options Open To The Sub Committee

9.1 The Sub Committee must have regard to the following:

- Eastbourne's Statement of Licensing Policy 2007-2010
- Statutory guidance as amended in January 2010, under Section 182 of the Licensing Act 2003.
- Representations from the proposed Premises Licence Holder and/or the Designated Premises Supervisor
- Representations from any Responsible Authority
- Representations from any "interested parties."
- Representations from Ward Councillors
- Other matters that are considered relevant and necessary to promote the Licensing Objectives.

9.2 Having considered all of the evidence put before it, the Sub Committee may:

- Grant the application in full as requested
- Grant the application but modify it by:
 - altering hours or activities;
 - adding conditions as necessary, or
 - omit parts as considered 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 is made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act, amended in January 2010.

10.2 This Guidance is provided in order to assist the Council in carrying out functions under the Licensing Act 2003.

10.3 Furthermore, the Licensing Sub Committee must have regard for the Eastbourne Borough Council's Statement of Licensing Policy 2007-2010.

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.

- 11.2 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.
- 11.3 Whilst 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

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (January 2010)
- Hearing and Regulations, Licensing Act 2003 – 2005
- Eastbourne Borough Council Licensing Statement 2007-2010
- Human Rights Act 1998
- Licensing Act 2003

Leaf Hall/LA2003committee report