

Body: Licensing Sub Committee
Date: 27th April 2011
Subject: Application for a New Premises Licence for Piano Bar Eastbourne Limited
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 to be known as Piano Bar and Restaurant, located at 85-87 South Street, Eastbourne.
- 1.2 The premise is currently closed but was previously licensed prior to the implementation of the Licensing Act 2003 as a restaurant known as "Sticky Fingers." The licence holder at that time opted to allow the licence to lapse, hence the reason for a new application being made.

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 E – Live Music (Indoors only)

12:00 – 0100 hours Monday – Saturday
12:00 – 00:00 hours Sunday

Section F – Recorded Music (Indoors only)

09:00 – 01:00 hours Monday – Saturday
10:00 – 00:00 hours Sunday

Section L – Late Night Refreshment (Indoors only)

23:00 – 01:00 hours Monday – Saturday
23:00 – 00:00 hours Sunday

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

09:00 – 01:00 hours Monday – Saturday
09:00 – 00:00 hours Sunday

Section O – Open to the Public

09:00 – 01:30 hours Monday – Saturday
09:00 – 00:30 hours Sunday

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. The applicant has included an Operational Statement appended to the application form. This is included at Appendix 1.
- 3.2 A layout plan of the premises is included at Appendix 2. It has been determined that all those "interested parties" live in the vicinity of the proposed premise.

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. In this instance, as a result of the consultation process, a number of representations have been received. These are detailed at Section 8 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 2011 - 2014

- 6.1 Copies of the Council's Statement Of Licensing Policy 2011 -2014 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 2011 - 2014 outlines the matters the Authority will consider when determining matters under the Licensing Act 2003. An overview appears below.

7.0 Cumulative Impact

- 7.1 The premises in question is located in the Cumulative Impact Zone. It is recognised that the impact of the number, type and density of licensed premises in a given area may lead to problems of noise, nuisance, crime and

disorder outside of, or a distance from licensed premises. Cumulative Impact is defined as the “potential impact upon the Licensing Objectives of a significant number of licensed premises concentrated in an area,” and is a proper matter for consideration by the Licensing Authority.

- 7.2 The Licensing Authority may receive representations from a Responsible Authority or ‘interested party’ that the cumulative effect of licences is leading to an area becoming saturated. This creates exceptional problems of disorder and nuisance, over and above the impact from individual premises which undermines the promotion of one or more of the licensing objectives.
- 7.3 Where valid representations are received, the Cumulative Impact Policy creates a rebuttable presumption that the application will be refused. It is for the applicant to demonstrate that he will not add to existing problems in the area or undermine the Licensing Objectives. The full Cumulative Impact Policy can be found at appendix 2 of the Council’s Statement of Licensing Policy. 2011 – 2014.

8.0 The Licensing Objectives

8.1 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.

8.2 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 in the vicinity of the premises. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

8.3 Protection of children from harm

The Statement of Licensing Policy requires that the Operating Schedule 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.

8.4 Prevention of Crime and Disorder

The 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.

9.0 **Representations**

- 9.1 A full copy of all representations is included at Appendix 3, however a summary appears below. All those making representations have been determined "interested parties" as persons living or operating a business in the vicinity of the premises.

Interested Parties

- There have been 6 representations in total from local residents living in the vicinity of the premises.

5 representations have been received from Valentine Court and 1 from an address in South Street.

The representations are made under all 4 of the Licensing Objectives, and the main concerns are centred around noise emanating from the premises, alongside an increase in patrons leaving premises, the proposed closure times, and the proximity of the premises to local residents.

Representations from Responsible Authorities

- **Sussex Police** – No representations have been received subject to the following conditions being attached to the premises licence if granted.

"Seating for no less than 60 persons shall be provided and retained in the premises when premises are open."

"All customers to be seated and served at their table by way of waitress/waiter only."

"No vertical drinking areas shall be permitted in the Premises."

"Substantial food shall be available at all times the premises is open"

"All staff employed by the company will be given detailed training in order to meet the high standards of service required at these premises and to ensure that every member of staff fully understands their respective obligations and duties under the Licensing Act 2003. A staff manual will be maintained, updated as necessary, kept on the premises and made available for inspection by Police/Local Authority Licensing Officer on request"

"A minimum of 8 internal Close Circuit Television (CCTV) cameras will be installed to Sussex Police standards and will be operational 24 hours a day. All recordings will be retained for a minimum of 31 days and made available on request to Sussex Police and/or Local Authority officers. Sufficient staff to be trained in the use of CCTV including providing images when requested, and all images to be of an identification standard; the correct time and date to be displayed and altered accordingly to take account of British Summer Time and Greenwich Mean Time"

"An incident book is to be kept at the premises, all incidents occurring at the premises to be recorded therein and the book to be made available for inspection by Police/Local Authority Officer on request"

- **Eastbourne Borough Council Environmental Health Department** - No representations have been received subject to the following being attached to the licence: providing the following agreed condition

"Any music played in the premises should be at background level. This being that a conversation can take place in the premises without voices being raised."

The proposed conditions have been provisionally agreed with the applicant.

- **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

- 9.2 The Licensing Sub Committee will need to have regard to the Cumulative Impact Policy, and any history or likelihood of noise, nuisance, crime and disorder at the site or in the vicinity. In addition, matters impacting upon public safety and strategies to protect children from harm need to be considered.
- 9.3 The Licensing Sub Committee may consider any other matters that may negatively impact upon the Licensing Objectives and exercise their powers to impose conditions, or take the appropriate action as they see fit in order to promote the Licensing Objectives.
- 9.4 In determining what, if any, conditions should be attached to a licence, these should only be imposed where it is considered necessary, proportionate and reasonable on a case by case basis.
- 9.5 The applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

10.0 Options Open To The Sub Committee

- 10.1 The Licensing Sub Committee must have regard to the following:

- Eastbourne's Statement of Licensing Policy 2011-2014, with particular regard to the Cumulative Impact Policy.
- 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 "interested parties," these being persons who live in the vicinity of the premises or who operate a business in the vicinity.
- Other information as considered appropriate.

10.2 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 as necessary, or
 - Omit parts as considered necessary for the promotion of the Licensing Objectives.
- Reject the whole or part of the application.

11.0 Legal Considerations

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

11.2 Furthermore, the Licensing Sub Committee must have regard for the Eastbourne Borough Council's Statement of Licensing Policy 2011-2014, particularly the Cumulative Impact Policy.

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.

12.2 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. However, in this instance, a licence is yet to be obtained.

12.3 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.

12.4 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 2011-2014
- Human Rights Act 1998

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