

Body: Licensing Sub Committee
Date: 20th March 2012
Subject: First Choice Supermarket Ltd, 2-9 Fife Court, 97 The Hydneye, Eastbourne, BN22 9DD
Designated Premises Supervisor Mr Bayram Sahindal
Report Of: Danielle Bryant, Licensing Officer
Ward(s) Hampden Park Ward
Purpose To determine a review of a premises licence under the Licensing Act 2003.
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1.0 Background

- 1.1 The site currently known as First Choice Supermarkets Ltd, 2-9 Fife Court, 97 The Hydneye, Eastbourne has operated as a licensed premises in Eastbourne for a number of years under various operators and managers. The premises operates as an off licence.
- 1.2 The Premises Licence holder and the Designated Premises Supervisor is Mr Bayram Sahindal.
- 1.3 A copy of the premises licence and a layout plan is included at Appendix 1.

2.0 Review Application & Consultation Process

- 2.1 An application for a Review under the Licensing Act 2003 has been made by East Sussex County Council Trading Standards service on the 7th February 2012, under the prevention of crime and disorder licensing objective.
- 2.2 The review application was served on the Licensing Authority, the person who holds the Premises Licence, and all other Responsible Authorities as specified under the Licensing Act 2003.
- 2.3 The reason for the review is that East Sussex County Council Trading Standards service found Drop Vodka on the premises. Samples were taken and the results were analysed, which has revealed that the vodka breached The Spirit Drink Regulations 2008, The Food Labelling Regulations 1996 and The General Food Regulations 2004.
- 2.4 The proper notices advertising the application for review of the premises licence were also prominently displayed on the premises, and at the Council's Offices at 1 Grove Road, in a place where they could be clearly seen by members of the public.
- 2.5 A notice has also been posted on Eastbourne Borough Council's website with regard to the review application, in order to inform the wider public of the application. Proper consultation in accordance with the requirements of the Licensing Act 2003 has been undertaken for the required period.

- 2.6 A copy of the application for review is attached at Appendix 2.
- 2.7 As a result of the consultation process that ran from the 7th February 2012 to the 6th March 2012, no further representations have been received.
- 2.8 As a result of the consultation process, we have had five letters in support of the premises from members of the public in the vicinity. The main points outlined in all of the letters are that the owners are very helpful and hardworking. These are attached in full in Appendix 3.

3.0 The Hearing

- 3.1 The Licensing Act 2003 (Hearings) Regulations 2005 state that a hearing must be held by the Licensing Authority within 20 working days after the initial 28 day consultation period.
- 3.2 A determination on the review application must be made no later than 2 months after the day of the original giving of notice by relevant parties seeking a review of the premises licence.

4.0 The Decision Making Process - The Licensing Objectives

- 4.1 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

5.0 Commentary on Eastbourne Borough Council's Statement of Licensing Policy

NB. Copies previously circulated as reference material to Members. It can also be located at. www.eastbourne.gov.uk/licensing

- 5.1 Whilst each application will be considered on its merits, the Licensing Sub Committee will have due regard for the Eastbourne Borough Council's Licensing Statement, adopted in February 2011, in respect of the Licensing Act 2003, and the promotion of the Licensing Objectives.

5.2 The Prevention of Crime and Disorder

The Council's Statement of Licensing Policy states that the premises' 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 in order to promote the Licensing Objectives.

5.3 Public Safety

The Council's Statement of Licensing Policy states that the premises' Operating Schedule should include steps to ensure the physical safety of patrons and the overall suitability of the premises. This might include the imposition of conditions regarding capacity and mechanisms to promote responsible drinking

and safer socialising. The restriction of types of licensable activity, hours of such and imposition of conditions may be considered and applied as appropriate.

5.4 Prevention of Public Nuisance

The Council's Statement of Licensing Policy states that within the Operating Schedule, operators will be required to demonstrate how they intend to prevent nuisance arising, disturbance occurring and the steps taken to protect amenities. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

5.5 Protection of children from harm

The Council's Statement of Licensing Policy requires that operating schedules specify the measures and management controls in place to protect children from harm. Conditions can be placed to restrict access to children to 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.

5.6 The Licensing Policy goes on to state that:

"Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act".

6.0 Options open to the Committee

6.1 When determining the application, the Licensing Sub Committee must have regard to the contents of the review application and any relevant representations contained therein. At this hearing the Licensing Authority must:

- Consider the request for review
- Consider any relevant representations and associated evidence accordingly.
- Have regard to the Council's Statement of Licensing Policy
- Have regard to Section 182 Guidance, as revised in January 2010, issued in conjunction with the Licensing Act 2003.
- Where appropriate, take such steps as is considered necessary for the promotion of the Licensing Objectives.

6.2 These steps are:

- To modify the conditions of the licence
- To exclude a licensable activity
- To remove the Designated Premises Supervisor from the licence
- To suspend the licence for a period not exceeding 3 months, or
- To revoke the licence.

6.3 The determination, if not completed at the hearing, shall be provided within 5 working days. Such a determination does not have effect until after the appeal period or, if an appeal is lodged, until after the appeal is disposed of.

7.0 Legal Considerations

- 7.1 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.
- 7.2 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.
- 7.3 When considering these terms and conditions the Sub Committee will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in activity in the area concerned, in addition to the promotion of the Licensing Objectives.

8.0 Human Rights

- 8.1 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, revised January 2010.
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council's Licensing Statement
- Human Rights Act 1998

Dlb/licensinghearings/firstchoicesupermarketreview