

**Body:** Licensing Act Sub Committee

**Date:** 9<sup>th</sup> January 2013

**Subject:** Application For a New Premises Licence, Kass Convenience Store, 28 Terminus Road, Eastbourne

**Report Of:** Karen Plympton, Licensing Manager

**Ward(s)** Devonshire Ward

**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 a premises licence under the Licensing Act 2003 for Shams Convenience Store, 28 Terminus Road, Eastbourne.
- 1.2 The area is currently described as a convenience store. The applicant intends to supply of alcohol off the premises.

## **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:

### **Section M – Supply of Alcohol**

- 2.2 08:00 hours to 23:00 hours                      Monday to Sunday

These hours correspond to the hours that the premises are open to the public.

## **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 the steps; they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. These are:
- The prevention of crime and disorder,
  - Public Safety,
  - The prevention of public nuisance; and
  - The protection of children from harm.

- 3.2 The Operating Schedule detailing the steps the applicant intends to take to promote these can be found at Section P of the application form, included at Appendix 1. There is no reference to measures the applicant will take to address the Cumulative Impact Policy.
- 3.3 In making any decision, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight.

#### **4.0 Eastbourne Borough Council's Statement of Licensing Policy 2011 - 2014**

- 4.1 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](http://www.eastbourne.gov.uk/licensing).
- 4.2 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 on the April 2012, and must act to promote the 4 Licensing Objectives.
- 4.3 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. This Policy offers a framework for decisions; however, Members may choose to depart from it, offering reasons for doing so. The Licensing Policy Statement is being reviewed as a result of legislative changes and revisions to the Section 182 Guidance issued in April 2012, but remains a valid framework for decision making in relation to Licensing Act 2003 matters.

#### **5.0 Overview of the Councils Statement of Licensing Policy 2011 - 2014**

##### **5.1 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. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

##### **5.2 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. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

### 5.3 **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 on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

### 5.4 **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 on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

## 6.0 **Cumulative Impact**

6.1 The premises in question is located within 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.

6.2 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.

6.3 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.

6.4 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 address the Cumulative Impact Policy and produce evidence to demonstrate that the matter:

- (a) Will not add to the cumulative impact caused by licensed premises and challenges already experienced in the area;
- (b) Will not undermine the promotion of the Licensing Objectives.

6.5 The Cumulative Impact Policy clearly states that licence applications in the Zone should be refused, unless Members are satisfied that the applicant has provided evidence to show that premises will not exacerbate existing issues in the locality, or undermine the promotion of the Licensing Objectives.

6.6 At the time of writing this report, other than the Operating Schedule, the applicant has not provided any evidence to support the application, or to demonstrate that the Cumulative Impact Policy should be set aside.

6.7 The full Cumulative Impact Policy can be found within the Council's Statement of Licensing Policy 2011 – 2014. Copies are available at [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing), in the Members Room and will be provided at the hearing.

## **7.0 Consultation Process**

7.1 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 respect of the application submitted on the 8<sup>th</sup> November and received on 12<sup>th</sup> November, the Licensing Team confirms that all of the statutory requirements have been met.

7.2 As a result of the consultation process, representation has been made against the application. This is detailed more fully at Section 8 of the report.

## **8.0 Representations**

8.1 A copy of all representations received are included at Appendix 2. An overview appears below.

<p><b>Representations from "Interested Parties."</b></p> <ul style="list-style-type: none"><li>• A representation has been received from Mr Richards, Town Centre Manager, Eastbourne Borough Council under the prevention of public nuisance and the prevention of crime and disorder Licensing Objectives.</li></ul>
<p><b>Representations from Ward Councillors</b></p> <ul style="list-style-type: none"><li>• No representations have been received.</li></ul>
<p><b>Representations from Responsible Authorities</b></p> <ul style="list-style-type: none"><li>• <b>Sussex Police</b> – A Representation has been received under the prevention of crime and disorder Licensing Objective, in conjunction with the Cumulative Impact Policy.</li><li>• <b>Eastbourne Borough Council Health and Environmental (Noise) Department</b> - No representations have been received.</li><li>• <b>Eastbourne Borough Council Licensing Authority</b> – No representations have been received.</li><li>• <b>Eastbourne Primary Health Care Trust</b> – no representations have been received.</li></ul>

- **East Sussex Fire and Rescue Service** – No representations have been received.
- **Eastbourne Borough Council Health and Safety Department** – No representations have been received.
- **Eastbourne Borough Council Planning Department**– No representations have been received.
- **Area Child Protection Team**– No representations have been received.
- **Trading Standards, East Sussex County Council** – No representations have been received.

8.2 Copies of the representation received by the Licensing Team from Sussex Police have been forwarded to the applicant's or their legal representative.

8.3 The applicant, and those making representations may look to suggest conditions, or revisions to the application to address concerns and as a means to promote the Licensing Objectives.

8.4 Any conditions which may be offered or imposed on a licence if granted must be:

- Proportionate;
- Achievable;
- Able to be understood;
- Enforceable;
- Appropriate;
- Not duplicating other primary legislation;
- Individual and tailored to the premise.

## **9.0 Options Open To The Sub Committee**

9.1 In reaching a decision, 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, which creates a presumption to refuse applications unless the applicant can provide evidence to the contrary.
- Statutory Guidance as amended in April 2012, 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 the local community and Ward Councillors.
- Other information as considered appropriate.

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 as necessary, or
  - Omit parts as considered necessary for the promotion of the Licensing Objectives.
- Reject all 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 November 2012. This Guidance is provided in order to assist the Council in carrying out functions under the Act.

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

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

11.3 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.

11.4 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.

## **12.0 Right of Appeal**

12.1 An applicant and/or a person making a representation, be it a Responsible Authority or "interested party" has a right of appeal to the decision taken by the Licensing Authority. These provisions are detailed in Schedule 4 of the Licensing Act 2003.

## **Background Material**

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (January/October 2010 & April 2012)
- Hearing and Regulations, Licensing Act 2003 2005
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998