



## Licensing Act Sub-Committee – Record of Hearing held on Tuesday, 22 October 2013 at 6.00 pm

**Members:** Councillor Shuttleworth (Chairman), Councillors Mrs Hearn and Mrs West.

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**1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct. (Please see note at end of agenda).**

None were declared.

**2 Variation of a Premises Licence - Eastbourne Pier**

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Senior Specialist Advisor outlined the report regarding the application to vary a premises licence for Eastbourne Pier, Grand Parade.

The premises were located in the Cumulative Impact Zone. Cumulative impact is defined as the potential impact on the promotion of the licensing objectives where there are a number of licensed premises concentrated in one area. Where the number, type and density of licensed premises are unusually high, serious problems of noise, nuisance and disorder can occur outside or some distance away from the licensed premises in question. This is described as the cumulative impact of all premises taken together. When an area becomes saturated it creates exceptional problems that undermine the promotion of one or more of the licensing objectives. When valid representations are received in respect of the premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption is created that the application should be refused.

Currently the premises in question offered a variety of activities, some of which were appropriately regulated under the Licensing Act 2003.

The application, detailed in the report, included steps taken by the applicant to promote the four licensing objectives. This was included at Appendix 1 of the report.

Representation had been received from 12 members of the public including a petition consisting of 17 signatures objecting to the application. Sussex Police and Eastbourne Borough Council Licensing Team had also made representations against the application as responsible authorities. The representations focused on the prevention of crime and disorder and

prevention of public nuisance licensing objectives, particularly the potential for noise, nuisance and alcohol fuelled disturbances in the area later at night.

Letters had also been received from Mr Hopkins, 720 Taxis and Mr Curry of the University of Brighton Student's Union in support of the application.

The Senior Specialist Advisor detailed the mediation period that had taken place. The Sub-Committee was advised that no agreement had been made between the various parties objecting to the application and the applicant.

Options open to the Sub-Committee was granting the application in full, granting it subject to modifications or rejecting the whole or part of the application.

The Sub-Committee requested clarification regarding the detailed provisions of the application which had been submitted. Ms Clover, Counsel for the Applicant advised that Part 3 of the Application detailed the proposed variation in full.

Mr Stemp, representing Sussex Police addressed the Sub-Committee outlining the concerns that had been raised to the application. He stressed the importance of the Council's Cumulative Impact Policy and the requirement for the applicant to demonstrate in their Operating Schedule that there would be no negative cumulative impact. Mr Stemp contended that the applicant had not provided any evidence to rebut the presumption which arose as a result of the policy.

Mr Stemp referenced section 8 of the variation relating to the wording of the CCTV system. Sussex Police requested clarification from the applicant regarding this and whether it was requested purely due to a technological change.

He then referenced variation 1-5 and 9-12 of the application and advised the Sub-Committee that all would likely to add to the cumulative impact in the area and reiterated that no evidence had been provided to suggest otherwise.

Sussex Police were also concerned that variation 7 of the application, which amended the condition under Annex 3 of the existing licence had diluted the prohibition "Customers shall not be permitted to take bottles or glasses from the premises or to bring alcohol onto the premises" to a less restrictive condition.

Mr Stemp referenced Section M of the application where the applicant was required to demonstrate the steps taken to meet the four licensing objectives. He stated that there was no evidence submitted by the applicant and rather just an assertion made that there would be no increased risk to the licensing objectives. He therefore recommended that the Sub-Committee refuse the application.

Before Ms Clover made her submissions, the Monitoring Officer clarified that Eastbourne Borough Council maintained its objection to the application in its capacity of responsible authority. As Mrs Ball, Specialist Advisor (Licensing) was unable to attend tonight's hearing, the Monitoring Officer advised the

Sub-Committee that her representation stood as detailed in the documents pack.

Ms Clover then addressed the Sub-Committee on behalf of the applicant. She acknowledged the concerns that had been raised by interested parties however suggested that the proposed extension of hours would assist in reducing the cumulative impact on the area. She contended that the basis of the application was financial viability as the current licensee was unable to compete with neighbouring businesses.

Addressing the concern of noise and disruption when leaving the premises, Ms Clover referenced that the applicant had produced a dispersal policy that detailed how the premises would deal with people leaving the premises.

Ms Clover then referenced variation 11 of the application which proposed to extend the licensable area to include the tea rooms and burger kiosk, indicated by the plans submitted with the application. She advised that the Tea Rooms were used for private functions and appealed to the older generation. She advised the Sub-Committee that the applicant would be happy to close the Tea Rooms at midnight, if they chose to impose an additional condition.

Ms Clover informed the Sub-Committee that a meeting took place on the 7<sup>th</sup> October 2013 that gave an opportunity for residents and responsible authorities to discuss various concerns with the application. She advised that Sussex Police did not attend that meeting.

Addressing the Cumulative Impact Policy, she informed the Sub-Committee that there was no evidence to suggest the regulated entertainment of boxing and wrestling applied for would have a detrimental impact on the area. She then advised that numerous sports activities had been held at the premises during 3 Temporary Events that had been held this year. Sussex Police had not raised any objections to the Temporary Event Notices which had been served, which was evidence that they did not consider that these activities would have a bad impact on the area.

Ms Clover then made reference to Councillor Wallis' representation that had mentioned that the showing of films could potentially be in direct competition with locally established venues. She advised the Sub-Committee to not take this into consideration as it was not relevant to the licensing objectives.

Ms Clover then clarified the query asked about the rewording of the clause relating to CCTV, which Sussex Police had raised during their representation. She confirmed that amended wording was required due to a technological upgrade of the CCTV system to digital.

Acknowledging that safety was paramount at all times, Ms Clover referenced the Council's Cumulative Impact Policy and the rebuttable presumption. While it was accepted that the applicant was required to rebut the presumption, she suggested that Sussex Police and Eastbourne Borough Council's Licensing Team should advise what evidence needed to be provided.

Ms Clover then addressed variation 7 of the application that Sussex Police had raised concerns due to it being less restrictive. She outlined the three areas of the premises, Atlantis Nightclub, the Ocean Suite which was for private

functions and included a terrace to look out to the sea, and the Waterfront Pub, which was family orientated. It was felt that it would be too restrictive to prevent those using the Ocean Suite or Waterfront Pub and not causing any disturbance from taking their drinks outside.

Addressing other parts of the application, Ms Clover advised that the variation to add an additional hour to all licensable activities on the day that British Summer Time commences was a normal occurrence for premises in order to recoup an hour of trading that would be lost. Ms Clover did advise that the applicant was happy to restrict the variation to add an additional hour to all the Bank Holiday weekends to just Sundays only and exclude Easter if necessary.

Ms Clover then covered part of the application relating to the extension of hours. She advised that only Wednesday, Friday and Saturday were club nights for the premises. She continued that the extended hours would increase the drinking up period for those visiting the premises, allowing an extra 30 minutes to disperse. The issue of noise originated from the mass number of people leaving the premises at once at an earlier time compared to nearby clubs. The current licence does not provide enough time for those at the premises to order some food and a taxi, services that would be provided in the variation.

Ms Clover then detailed the dispersal policy, discussed earlier and made reference to the representation made by Mr Dave Hopkins representing 720 Taxis. 720 Taxis had been in discussions over a number of months with the management of the premises in an attempt to reduce noise levels and it was agreed that 720 Taxis would open a satellite office on the Pier.

Ms Clover then addressed the concerns raised by Mr Giorgi, owner of The Afton Hotel. She felt that several of the concerns raised had been resolved during her submissions. She detailed that door staff that monitored those entering and leaving the premises for any anti social behaviour. She advised that the premises turn away around 100 people on a club night and the disturbances that occur from these individuals come as a result from them being released from neighbouring clubs but the blame ends up being placed on the premises. She informed the Sub-Committee that the premises had not received any complaints directly or any warning from Sussex Police. If there was a concern of noise and disturbance, the Responsible Authorities had opportunities to call for a review of the premises but they had not done so.

She suggested that only the representation from Mr Hayter, owner of Bay Tree Guest House made a direct link between the noise and disturbance in the area and the premises. She continued that the majority of representation raised generalised concerns with the town, which she hoped the Responsible Authorities would take appropriate enforcement action.

Ms Clover then advised that there were three other nightclubs in Eastbourne with later closing hours than the premises. She referenced the representation made from Mr Curry, representing the University of Brighton's Student Union that stressed the importance of a level playing field in the night time economy. Ms Clover detailed the term double migration where people would go from one club to another, especially if one closed earlier. With the

extension of the hours at the premises, this problem would be reduced. The Student Union had also agreed to provide a shuttle service every 10-15 minutes that would transport students from the premises to the University. Currently the service was not used regularly because students wanted to stay out later and the current licence is unable to compete with other clubs. Ms Clover also advised that the Pier itself would be providing a shuttle service to take people from around the town to the premises. This would also help to address the noise disturbances in the town.

Ms Clover concluded by asking the Sub-Committee to take into consideration that Atlantic Nightclub had recently undergone a refurbishment that cost £750,000 and an additional £500,000 for maintenance. She advised that Atlantis was a major income generator for the premises.

Councillor Wallis then addressed the Sub-Committee objecting to the application. He acknowledged that the premises was very accommodating but there was an issue with the area outside where anti social behaviour would occur. Councillor Wallis stressed the importance of striking the right balance between quality of life for residents and a thriving night time economy. He advised that other businesses were suffering as a result of anti social behaviour around the premises such as fighting, shouting, urinating in the streets and vandalism to vehicles and properties. He then made reference to the petition that had been submitted by the Afton Hotel, objecting to the application which included those that visited the town and stayed at the hotel.

Councillor Wallis then gave an overview of the current binge-drinking culture where nationally 70% of A&E admissions over the weekend between midnight and 5am were related to alcohol. Councillor Wallis asked whether there could be a condition to add additional door staff to monitor the surrounding area. He was advised that a condition could be included. He concluded by recommending that the Sub-Committee refuse the application.

Mr Giorgi, owner of the Afton Hotel then addressed the Sub-Committee in objection to the application. He advised that Ms Clover's submission that there had been no complaints direct to the premises was incorrect. He advised that this had been an ongoing problem and he had discussed the problem regularly with the manager Mr Stylianos and the Council. He continued that the premises were not fulfilling the licensing objectives and referenced an incident where people were coming out of premises and sitting in his Hotel lounge. Another incident occurred where Mr Giorgi and his wife had brought in an individual coming out of the premises after he had been beaten up and paid for their taxi fare home. He concluded by suggesting that the application should not be approved and instead a review of the current licence should be undertaken due to the anti social behaviour that is occurring in the area.

Mr Stylianos, manager of the premises clarified to the Sub-Committee that he had not been notified of any problems by any Responsible Authorities but that he had met with Mr Giorgi to discuss the issues in the area. There had been talks of a taxi rank being placed outside the premises but this was refused by Highways.

Mr Lear addressed the Sub-Committee in objection to the application. He stated that there would be no benefits for the town if the licensing hours of sale of alcohol were extended. As a resident in Elms Avenue for 12 years, he

had experienced anti-social behaviour in the area such as noise, drunkenness, damage to private property that had affected the lives of residents and nearby businesses.

Mr Lear referenced the application to vary a licence by Eastbourne Pier in October 2005 where a larger number of representations were made, objecting to the application. Mr Lear attributed the significant fall of representations for this application to the anti-social behaviour wearing everyone down. He continued that it was important to protect the human rights of residents and the current licence and proposed variation had a direct negative impact of their lives. He stated that there was no justification in the application to warrant an extension to the licence.

Mr Lear then referenced his representation and stated that those who are turned away from the Pier became aggressive and caused disruption to the area. He concluded by stating that the extension of the hours was just a way for the premises to make additional revenue and the numbers quoted for the refurbishment was trivial when compared to the value of what the company chain the premises belonged to represented.

Mr Pattenden addressed the Sub-Committee objecting to the application. He informed the Sub-Committee that as an owner of the Ambleside Hotel, his business relied on repeat visitors to be successful. The proposed extension of hours would result in the public hanging around in the area for longer causing more disruption as the Taxi services don't have the resources to accommodate all at once. He detailed examples of disturbances to his business, including having to sweep vomit off the pavement every morning, flower tubs being thrown around and destroyed and wheelie bins being thrown in the road. A footpath had also been blocked at the back of Elms Avenue and Seaside in an attempt to deter anti-social behaviour but this had been broken by vandals.

He advised the Sub-Committee that when he started his business, there had been 18 Bed & Breakfast in the area compared to just 2 now. He concluded by stating that one business shouldn't impact the other and the premises was damaging nearby businesses. He didn't believe that the supply of food on the premises would make a difference as people out late at night liked to venture into town to visit McDonalds.

The Senior Specialist Advisor clarified to those present that page 53 of the documents pack circulated to everyone prior to the meeting outlined the premises' existing hours. The information provided in Section 2 of the Senior Specialist Advisor's report represented a combination of the existing hours in place on the licence and the variations sought after by the applicant.

Mr Stemp, representing Sussex Police responded to the applicant's submissions. He advised the Sub-Committee that the TENs hosting sports events, that Ms Clover had mentioned took place much earlier than the variation licence hours applied for therefore was not comparable.

Referencing the 7<sup>th</sup> October meeting that the applicant set up to discuss concerns, Mr Stemp advised that an exchange of emails had taken place as detailed in the document pack between Sussex Police and the applicant.

Sussex Police felt it was appropriate that the Council's Licensing Committee make the decision to grant or refuse the application having regard to the licensing authority's own policy.

Councillor Hearn raised concerns with the various incidents that had taken place in the area and queried what steps Sussex Police were taking to combat this. Chief Inspector Biglands addressed the Sub-Committee, stating that he was humbled by the submissions made by the public and urged the Sub-Committee to add great weight to this in their deliberations. He then detailed a Police Operation: Marble where resources are sent to the town and the premises to deal with anti-social behaviour. This occurred all throughout the year and they responded to all incidents that were reported. He continued that an officer had worked with residents in Elms Avenue in an attempt to resolve complaints. It was acknowledged that this was an ongoing issue.

Councillor Wallis, as part of the Town Centre Neighbourhood Panel detailed the discussions relating to Elms Avenue and advised that there may have been no crimes reported, in response to Ms Clover's request for specific incidents but currently noise created was exempt from prosecution under public disturbance laws which were a major issue in the area.

The Sub-Committee asked Mr Hopkins to outline how 720 Taxis would contribute to reducing the anti social behaviour in the area. Mr Hopkins addressed the Sub-Committee and advised as discussed earlier, the plans to open a satellite office on the premises and confirmed it was ready to go. It would run from 1am until all those leaving the premises had gone. A raffle ticket system would be introduced to make the process run smoothly.

When asked why the service wasn't being provided at the moment, Ms Clover reiterated that people don't want to go home at the time the premises currently closed, hence the problem created from moving from the premises to another club.

Councillor West asked what guarantees the applicant could give to the neighbouring businesses and hotels that the situation would not be made worse. Mr Stylianos detailed the structure that would occur should the extension of the hours be granted. The Supply of Alcohol would end at 03.00 hours resulting in an extra 30 minutes that would allow an hour for people to be fed and order a taxi home. Currently there was no taxi service or food available to order so people just leave the premises straightaway.

Councillor West remained concerned that there had been no evidence submitted tonight that rebutted the presumption against granting the application, arising from the Cumulative Impact Policy. Mr Stylianos responded by reiterating in addition to the taxi service provided, University of Brighton would themselves provide a shuttle service and the extended hour would halt the noise and disruption halfway down the Pier.

Mr Stylianos then gave an example of a celebrity event at Atlantis which after finishing earlier, compared to other clubs, around 60-70% left the premises to go elsewhere.

The Senior Specialist Advisor informed the Sub-Committee that each application should be judged on its own merits and the legal adviser clarified

that the operating hours of neighbouring premises were not relevant to the Committee's consideration of this application.

Councillor Wallis concluded his representation by reiterating his objection to the application. He referenced Mr Pattenden's submissions and the petition signed by the residents on Elms Avenue, appended to the report showing the effect the anti social behaviour had on the area. He also advised that many other businesses wanted to attend tonight's hearing. He acknowledged that the University of Brighton would arrange shuttle buses but not everyone who visited the premises lived in Meads. He also stated that despite the good idea of migration at the premises with a food and taxi service being available to order, he remained sceptical that it would reduce the anti social behaviour.

Following all the evidence presented to the Sub-Committee, Mr Stemp summarised on behalf of Sussex Police. He advised that the applicant's submissions regarding commercial considerations and financial viability did not exempt the applicant from the requirements of the licensing authority's statement of licensing policy and its cumulative impact policy. He considered that the licensing authority had a legitimate expectation of being provided with empirical evidence and contended that notwithstanding submissions on point the applicant had not provided evidence to rebut the presumption.

He remained concerned that although the applicant's submissions had indicated that the extension of hours would allow for more time for the public to go home, further submissions from the applicant had stated that the public don't wish to go home early and instead travel to other nightclubs in the town. He recommended that the Sub-Committee refuse the application.

Ms Clover summarised on behalf of the applicant. She gave a recap of the application at the Sub-Committee's request. She advised that none of the responsible authorities had raised substantive concerns with variation 5 of the application. She continued that the applicant was happy to reword variations 6 and 7 if necessary but it was important to differentiate between the Atlantis Nightclub and Oceana Bar sections of the premises.

She continued by giving a background to the staff at the premises. Mr Stylianos, who had been manager of the premises for 11 years, was part of a dedicated team with plenty of bar manager experience. There was regular training of all staff and this was checked quarterly. She advised the Sub-Committee that there had been no complaints relating to the operation of the premises and that there had been a low level of recorded incidents near the premises.

She then stated that Sussex Police had failed to specifically link the premises with the cumulative impact on the area and that those incidents recorded outside the premises were not relevant to the Sub-Committee's deliberations. She referenced 9.12 of the Secretary of State Guidance that states that the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder licensing objective. The submissions by Sussex Police raised only generalised concerns with the area but a connection with the premises was absent.

She then referenced the petitions that had been submitted and suggested that it was signed by people who were not familiar with the area. She urged the Sub-Committee to instead place great weight on the submissions by 720 Taxis and the University of Brighton Student's Union, important stakeholders of the town. As the Student's Union representation had stated, approving the application would allow a level playing field which was important for competition. Crucially the applicant had taken onboard the concerns raised by the responsible authorities and interested parties and Mr Stylianos was hoping to set up a residents committee that would address any concerns.

She then advised that there had been plenty of discussions about whether the variation application would increase or decrease the cumulative impact but there was no clear answer because the premises hadn't as yet operated under extended hours. If problems arise from approving the application, the Sub-Committee would be able to review the licence and if circumstance required it would have the power to revoke it. She also advised the Sub-Committee that their deliberations should take into account the fact the premises was being driven out of business due to nearby competitors operating at later hours.

Ms Clover concluded by referencing the Cumulative Impact Policy and stated that notwithstanding the rebuttable presumption which had been created, it was open to the applicant to provide evidence in their operating schedule or conditions and in their submissions to demonstrate that there would be no additional negative impact on one or more of the licensing objectives. She suggested that more evidence needed to be submitted from the responsible authorities rather than just state the cumulative impact policy. She believed that the application had provided sufficient evidence to rebut the presumption. She recommended that the Sub-Committee approve the application.

Before the Sub-Committee retired to consider and determine the application, Ms Clover clarified to the Sub-Committee that the applicant was happy to restrict variation 12 to bank holiday Sundays only and exclude Easter.

Ms Clover then provided paper copies of the applicant's dispersal policy discussed earlier, that the Sub-Committee agreed to take as part of their deliberations.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, guidance under the Licensing Act 2003, the four licensing objectives, the Council's Cumulative Impact Policy, Statement of Licensing Policy and Section 182 Guidance issued by the Department of Culture Media and Sport.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

**RESOLVED:** That the application to vary a premises licence in respect of Eastbourne Pier be determined as set out in the attached appendix.

The meeting closed at 10.48 pm

**Councillor Shuttleworth  
(Chairman)**

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## Eastbourne Borough Council Decision Notice

### Licensing Act Sub-Committee held on Tuesday 22 October 2013

- Premises Licence Holder:  
Premises: Six Piers Limited  
Eastbourne Pier, Grand Parade
- Reasons for Hearing: Relevant representations received from interested parties and responsible authorities under the prevention of public nuisance and the prevention of crime and disorder licensing objectives, this in the context of the Council's Cumulative Impact Policy.
- Parties in attendance: Applicant:  
Ms Sarah Clover (Counsel for the Applicant), Mr Christos Stylianos (Manager of Eastbourne Pier) and Ms Sarah Taylor (Solicitor from Poppleston Allen)
- Licensing Authority:  
Mr Jay Virgo (Senior Specialist Advisor),
- Legal Adviser: Ms Victoria Simpson (Monitoring Officer/Lawyer to the Council)
- Sussex Police:  
Chief Inspector Biglands, Sergeant Vokins and Mr Scott Stemp (Barrister)
- Interested Parties:  
Councillor Steve Wallis, Mr Stuart Lear, Mr John Pattenden, Mr Marco Giorgi, and Mr Dave Hopkins
- Decision made:
- That the variations listed in sections 1 – 7 of part 3 of the application be refused.
  - That the variations listed in the following sections of the application, be approved (where relevant, as amended during the hearing):
    8. To replace the current CCTV wording under Annex 3 with the wording provided in Section M(b) of the operating schedule.
    9. To add an additional hour to all current licensable activities on the day that British Summer Time commences, in order to preserve the timings stated on the premises licence;
    10. To remove condition (xvii) at Annex 3 which relates to the

capacity figures for the premises.

11. To extend the licensable area to incorporate the tea rooms and burger kiosk (as indicated on the plans submitted with the application). The tea rooms are permitted to open until midnight in accordance with their current opening hours and to host up to 20 events per year.

12. To add an additional hour to the current premises licence for Sunday only on ALL the bank holiday weekends, excluding Easter Sunday.

Reasons for Decision: The Sub-Committee has refused the variations listed in sections 1-7 of part 3 of the application and granted sections 8-12 as amended during the hearing having given due weight to the evidence placed before it. It considered the application in light of guidance made under the Licensing Act 2003, the licensing objectives, the Council's Cumulative Impact Policy, Statement of Licensing Policy and Section 182 Guidance issued by the Department of Culture Media and Sport.

The Sub-Committee were however not satisfied that adequate evidence had been produced by the applicant to demonstrate that those variations applied for and not granted would not add to the cumulative impact and the challenges already being experienced in the area. It was of the view that granting the variations would undermine the promotion of the licensing objectives, in particular those relating to the prevention of crime and disorder and the prevention of public nuisance.

The Sub Committee were of the view that the applicant had failed to rebut the presumption against the granting of the application created by the Council's Cumulative Impact Policy and sections 1-7 of the application should be refused.

The conditions added to sections 8-12 following amendments made during the hearing were necessary to promote the licensing objectives.

In reaching their decision, the Sub-Committee took into account all the representations that were made. Particular regard was given to the evidence of interested parties in the locality and to the representations made by Sussex Police. Careful consideration was given to the applicant's proposals as outlined in the application and the other evidence submitted, in particular the dispersal policy. Consideration was also given to the representations and proposals from 720 Taxis and the University of Brighton Student's Union.

The Sub-Committee did not attach any weight to any evidence that was not relevant to the licensing application.

Date of Decision: 22 October 2013

Date decision notice issued: 30 October 2013

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

### **RIGHT OF APPEAL**

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, they must do so to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.

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