



## **Licensing Act Sub-Committee – Record of Hearing held on Monday, 28 October 2013 at 6.00 pm**

**Members:** Councillor Shuttleworth (Chairman), Councillors Cooke and Murray

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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 received.

**2 Variation of a Premises Licence - Lusitano Café, 128 Seaside Road**

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 Lusitano Café, 128 Seaside Road, Eastbourne.

The premises were located in the Cumulative Impact Zone defined as where a significant number of licensed premises are concentrated in an area. 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 premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption is created that the application is refused.

Representations had been received from four members of the public, Mr Mitchell, Mr Guest, Mr Wathen and Mr Walters opposing the application. These were included at Appendix 3 of the report. The concerns raised by the interested parties centred on the potential for noise, nuisance and alcohol fuelled disturbance in the area.

The Senior Specialist Advisor detailed the mediation period that occurred following the consultation phase. Following discussions between Sussex Police and the Council's Health and Environment Team, the applicant agreed to attach certain conditions to the licence if granted. Details of these conditions were contained within the report. As a result of the agreement to attach the conditions to the licence if granted, Sussex Police and the Council's Health and Environment Team withdrew any objection to the application.

Mr Hall, Licensing Consultant addressed the Sub-Committee to advise that further additions had been made to the condition that stated during the extended hours of 22:00 hours and 23:30, all licensable activities including the consumption of food and drink would take place inside the premises and the seating outside would not be used. The applicant had now agreed to remove the seating outside during this period. Mr Hall continued by advising

that the CCTV system had already been installed at the premises. These points were acknowledged by the Sub-Committee.

The Sub-Committee was advised that the premises was currently open Monday – Sunday from 12:00 hours – 14:00 hours and 18:00 hours – 22:00 hours. The variation applied for would extend the opening hours from 07:30 hours – 00:00 hours Monday - Sunday. The application also applied for the supply of alcohol to take place from 08.00 hours – 23.30 hours Monday – Sunday. Further details of the application were contained within the report.

The Sub-Committee asked Mr Hall what the applicant had meant in part 3 of the application which described one part of the proposed variation to remove unfettered sale of alcohol. Mr Hall responded that the application wanted to sell alcohol that was not confined or restricted by the current licence operating hours.

Ms Phillipa Silva, who would be translating the applicant's submissions, addressed the Sub-Committee. She gave an outline to the Sub-Committee on the premises and why the applicants wanted to extend the hours of supplying alcohol. Lusitano Café was a premises that served the local community, the majority being of Portuguese origin. She advised that the Café offers a place to have breakfast, lunch and dinner and the variation to extend the hours of supplying alcohol was applied for because many of the Portuguese community like to have a glass of wine with their meals. A television was also present inside the Café and visitors liked to consume alcohol whilst watching one of the Portuguese football matches. Ms Silva continued that plenty of English residents had also visited the premises and were pleased with the service provided.

Mr Hall addressed the Sub-Committee and advised that the application was straightforward and sought to remove the restrictions of the current licence and replace with a more relaxed licence that combined the sale of alcohol and food throughout the day.

Mr Wathen addressed the Sub-Committee in objection to the application. He detailed the disturbances that had occurred, mainly in the summer with the outdoor seating area. Mr Wathen detailed the constant stream of people sitting outside smoking and talking continuously until the current closing time which was extremely noisy and unacceptable for those living in the locality. The Sub-Committee was then advised of an incident that occurred in September 2013. A fight had allegedly taken place and led to one man being covered facially with blood from an injury sustained.

Mr Walters addressed the Sub-Committee in objection to the application. He echoed Mr Wathen's submissions over the noise levels. Mr Walters added that as a result of those sitting outside the premises; disruption had been caused to the availability of the nearby highway. The Sub-Committee was also advised by Mr Walters that when the weather is bad, those at the Café go to the back of the premises to smoke.

Cllr Shuttleworth said as a result of these noise problems raised by the interested parties, it was up to the applicant to demonstrate that the variation application would not make the situation worse.

Cllr Murray questioned whether it was possible to limit the number of people who visit the premises. The Sub-Committee was advised that the benches outside would be removed and taken inside at 22:00 hours removing that area for congregating.

Ms Silva informed the Sub-Committee that the applicant had already taken steps to address the concerns raised by interested parties. A CCTV system had already been installed at the premises and advertising had been placed around the premises to advise customers not to make a loud amount of noise when smoking outside and that it was not an area for congregating. Ms Silva also attributed the noise identified to not only the premises in question, but other people in the nearby locality that frequent other establishments.

Mr Couper, providing legal support for the Sub-Committee addressed the point made by Mr Walters about people using the back of the premises to smoke. There was no part of the application that showed plans of the area at the back. The Senior Specialist Advisor asked whether any licensable activities occurred at the back of the premises, as this was not part of the licence application. Ms Silva responded that only a barbeque was used to cook chicken and steaks. Ms Silva continued that visitors do not use the area at the back of the premises.

The Sub-Committee then discussed the supply of alcohol at the premises. The Senior Specialist Advisor advised that a condition agreed with Sussex Police required all alcohol and food to be served to customers seated at tables by a waiter/waitress service only. In a response to a question from the Sub-Committee, Ms Silva informed them that the premises would operate like a restaurant.

The Sub-Committee asked what the applicant would do to deal with the congregation issues in the summer. Ms Silva responded that at the moment, there was not much noise disruption; however they would encourage visitors not to talk outside when smoking due to the nearby neighbours.

Mr Wathen was concerned that the sale of alcohol whilst a football match was on the television could result in a pub style environment, creating more noise and disruption.

Following all the evidence presented to the Sub-Committee, Ms Silva summarised on behalf of the applicant. She advised the Sub-Committee that most of the noise that had been identified by the interested parties took place during Temporary Event Notices (TENs). This had been a very busy time for the premises and the police had turned up to check and had raised no concerns. Ms Silva then reiterated that the premises was aiming to be a restaurant and not a pub.

Ms Silva then made reference to the fight that Mr Wathen had mentioned in his submissions. The Sub-Committee was advised that this fight had nothing to do with the premises and had started at another pub.

Mr Hall concluded by reiterating, as detailed earlier, that the applicant had agreed to attach certain conditions to the licence if granted, and added the condition that the outdoor table area would be removed at 22:00 hours. These conditions would support and bolster the four licensing objectives. Mr Hall also advised that the applicant was happy to consider any new conditions

that the Sub-Committee may feel appropriate to attach to the licence, if granted.

The Sub-Committee was also advised that there would be no public space at the back of the premises. He continued that the variation would ensure that the premises remain as a restaurant and not become a public house. Referencing the area outside the front of the premises, Mr Hall informed the Sub-Committee that the area was a popular place to walk and therefore was difficult to enforce. The installation of the CCTV system at the premises however would enable the recording of any anti-social behaviour occurring.

In a response to a question from the Sub-Committee, Ms Silva advised that the applicant had been running the premises since June 2013.

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

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

**RESOLVED:** That the new premises application in respect of Lusitano Café be granted as set out in the attached appendix.

The meeting closed at 7.36 pm

**Councillor Shuttleworth  
(Chairman)**

## Eastbourne Borough Council Decision Notice

### Licensing Act Sub-Committee held on Monday 28 October 2013

- Premises Licence Holder:  
Premises:  
Reasons for Hearing:  
Parties in attendance:  
Decision made:
- Luzia Francisca Baiao Silva / Fernando Da Fonseca Da Costa  
Lusitano Café, 128 Seaside Road  
Relevant representations received from interested parties under the prevention of crime and disorder and the prevention of public nuisance licensing objectives, arising from the Council's Cumulative Impact Policy.  
Applicant:  
Mr Bernard Hall (Licensing Consultant), Ms Luzia Francisca Baiao Silva, Mr Fernando Da Fonseca Da Costa and Ms Philippa Silva.  
Licensing Authority:  
Mr Jay Virgo (Senior Specialist Advisor)  
Legal Advisor:  
Mr Andy Couper (Lawyer)  
Interested Parties:  
Mr Derek Walters and Mr William Wathen.  
That the application be granted on the following grounds:
- Open to the Public:**  
Monday – Sunday            07.30 hours – 00.00 hours
- Supply of Alcohol (on the premises)**  
Monday – Sunday            08.00 hours – 23.30 hours
- Late night refreshment (indoors only)**  
Monday – Sunday            23.00 hours – 00.00 hours
- Subject to the following conditions:
- Provide availability of hot and cold food on the premises throughout licensed hours.
  - Waiter service of food, patrons seated at table/counter.

- Sharper surveillance of area immediately outside the premises.
- Installation of CCTV. Recording saved for 28 days and fitted in accordance with recommendations from Sussex Police.
- During the extended hours between 22:00 and 23:30 all licensable activities including the consumption of food and drink, will take place inside the premises. The seating outside will be removed during this period and will not be used.
- Persons using the outside of the premises for smoking should be made aware it is a residential area and noise be kept to a minimum and will only be used for smoking not congregating.
- All alcohol and food will be served to customers seated at tables by waiter/waitress service only.
- Substantial food shall be available at all times when the premises are open.
- Non-alcoholic beverages including drinking water shall be available at all times when the premises is open.

Reasons for Decision: The Sub-Committee has granted the application for a Premises Licence subject to the conditions specified having given due weight to the evidence placed before it, as well as the regulations and guidance 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 has weighed up the applicant's submissions alongside the representations made by the interested parties. On balance it was considered that the applicant has provided sufficient evidence to rebut the presumption against granting the application arising from the Council's Cumulative Impact Policy.

The additional conditions added to the licence, proposed by Sussex Police and Eastbourne Borough Council's Health and Environment Team, that was agreed with the applicant prior to the meeting was necessary to promote the licensing objectives.

The Sub-Committee were pleased that the applicant had already taken steps to promote the licensing objectives such as implementing a working CCTV system and ensuring all alcohol would be served via a table service only.

In reaching their decision, the Sub-Committee took into account all the representations that were made. Particular regard was given to the mediation period that had led to conditions being agreed with the applicant and the Council's Health and Environment Team and Sussex Police.

The Sub-Committee also took into account those concerns raised by the interested parties relating to the potential for noise, nuisance and alcohol fuelled disturbance in the area. As a result, the Group requested that the Council's Health and Environment team regularly monitor the premises to ensure the licensing conditions were being adhered to.

Date of Decision: 28 October 2013

Date decision notice issued: 6 November 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, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.

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