

Body: Licensing Sub Committee
Date: 28th October 2013
Subject: Application For a variation to a premises licence, Lusitano Café
128 Seaside Road, Eastbourne BN21 3PF
Report Of: Jay Virgo, Senior Specialist Advisor
Ward(s) Devonshire Ward
Purpose To determine an application for a variation to a premises
licence under the Licensing Act 2003.
Contact: Danielle Ball 01323 415367 or danielle.ball@eastbourne.gov.uk

1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council as Licensing Authority, for the premises known as Lusitano Café, 128 Seaside Road, Eastbourne, BN21 3PF.
- 1.2 The premises are currently trading as a licensed café.

2.0 The Application

- 2.1 An application for grant of a variation to a premises licence under the Licensing Act 2003 has been sought for the following activities:

Late night refreshment (indoors only)

23.00- 00.00 hours Monday - Sunday

Supply of alcohol (indoors only)

08.00 – 23.30 hours Monday - Sunday

Open to the Public

07.30– 00.00 hours Monday – Sunday

- 2.2 Add conditions to the licence-

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.

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 seen in the application form. This is included at **Appendix 1**.

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.

4.2 In this instance, as a result of the consultation process, a number of representations have been received. These are detailed at Section 8 of this 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 & Section 182 Guidance Issued

6.1 Copies of the Council's Statement of Licensing Policy have previously been circulated to Members. A copy is also retained in the Members Room or can be downloaded from:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/>

6.2 Whilst each application will be considered on its merits, the Licensing Sub Committee will have due regard to the Eastbourne Borough Council Statement of Licensing Policy 2011 – 2014, and Section 182 Guidance issued by the Department of Culture, Media and Sport, (revised in June 2013), and must act to promote the four Licensing Objectives.

6.3 Eastbourne Borough Council's Statement of Licensing Policy outlines the matters that the Authority will consider when determining matters under the Licensing Act 2003. An overview appears below.

6.4 The Prevention Of Crime and Disorder

The Council's 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.

6.5 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.

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

6.7 Protection of children from harm

The Statement of Licensing Policy requires that operating plans 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.

7.0 Cumulative Impact

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.

7.5 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.

7.6 The full Cumulative Impact Policy can be found within the Council's Statement of Licensing Policy 2011 – 2014. Copies are available in the members room and at:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/>

8.0 Representations

8.1 A full copy of all representations is included at **Appendix 2**, however a summary appears below.

Interested Parties

There have been **4** representations from members of the public:

Mr K Mitchell
Mr S Guest
W Wathen
Mr D Walters

The representations centre on the prevention of crime and disorder and the prevention of public nuisance (noise) Licensing Objectives.

Concerns centre on the potential for noise, nuisance and alcohol fuelled disturbance in the area.

Representations from Responsible Authorities

There has been **0** representations from responsible authorities:

- **Sussex Police** – No representations.
- **Eastbourne Borough Council Health and Environment Team** - No representations.
- **Eastbourne Borough Council Health and Safety Department** – No representations.
- **Eastbourne Borough Council Licensing Team**- No representations
- **Eastbourne Borough Council Planning Department**– No

representations.

- **East Sussex Fire and Rescue Service** – No representation
- **Area Child Protection Team**– No representations
- **Trading Standards (East Sussex County Council)** – No representations.
- **Primary Care Trust**- No representations

8.2 The Sub Committee will need to have regard to any history or likelihood of noise, nuisance, crime and disorder at the site, or in the vicinity of the site. In addition, matters impacting upon public safety and strategies to protect children from harm will also need to be considered.

8.3 The Sub Committee may also 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.

8.4 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.

8.5 The applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

9.0 Mediation

9.1 Eastbourne Borough Council's Health and Environment Team and Sussex Police asked for conditions to be added to the licence, if granted. The applicant has agreed to all of these conditions. A copy of the conditions are included at **Appendix 3** and is set out below:

- 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 not be used.
- Persons using the outside of the premises for smoking should be made aware it is a residential area to keep noise 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.

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 April 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 to 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. 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, and 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

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (June 2013)
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998

Licensing hearing/lusitano 128 seaside road