

Report to: Licensing Sub-Committee

Date: 17th December 2019

Title: Application for a variation to the current Premises Licence. Three Monkeys Bar and Kitchen, 16 Langney Road, Eastbourne BN21 3QA

Report of: Director of Service Delivery

Ward(s): Devonshire Ward

Purpose of report: To consider representations made against the variation application to the Premises Licence under the Licensing Act 2003 and make a decision on the application

Officer Recommendations: To consider representations made against the variation application to the current Premises Licence under the Licensing Act 2003 and make a decision on the application

Reasons for Recommendations: Relevant representations made within consultation period

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1 Introduction

- 1.1 Eastbourne Borough Council received an application for a major variation to the current Premises Licence under the Licensing Act 2003 for the Three Monkeys Bar and Kitchen premises at 16 Langney Road, Eastbourne from Dene Sonnessa. The application is included at **Appendix 1**.
- 1.2 The premises has held a licence since April 2017, under the name of Moreys, the change of name is included as part of this variation application. The premises has not traded as a licensed premises since receiving this licence therefore no DPS was needed to be named on the existing licence, going forward the DPS will be Mr Dene Sonnessa as confirmed in **Appendix 6**. The premises licence had been suspended due to non-payment of the annual fee but this was paid in full in September 2019 so it is a current licence. A copy of the current premises licence is included at **Appendix 2**.

2 **The Application**

2.1 An application for the grant of a variation to the premises licence under the Licensing Act 2003 for the following:

To add

Films

Monday - Sunday 08:00-03:00

Live music

Monday- Sunday 23:00-03:00

Recorded Music

Monday- Sunday 23:00-03:00

Performances of dance

Monday – Sunday 23:00-03:00

Anything of a similar description

Monday- Sunday 23:00-03:00

This is to cover use of an amplified karaoke machine

To extend

Late night refreshment

Monday –Sunday 23:30-02:30

Supply of alcohol

Monday- Sunday 23:00-02:30 (current licence is until 23:30hrs)

Opening Hours

Monday- Sunday 00:00-03:00

Note: Live and recorded music are deregulated within an on-licensed premises authorised and open for the sale of alcohol from 08:00hrs to 23:00hrs for audiences up to 500. Live unamplified music does not need a licence anywhere and with no audience limit between 08:00hrs to 23:00hrs.

Note: within the application some licensable activities have been crossed through this was done by a Licensing Caseworker with the applicant at the time of the application following a discussion about what he required on the licence.

2.2 The variation application is also asking to alter condition's as follows

To remove:

Waiter service to persons seated at tables

To change:

Substantial food available at all times to Substantial food available until 21:00hrs.

A copy of the application has been included at **Appendix 1**.

3 **Licensing Objectives**

3.1 When submitting an application for a variation to the current 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 **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. The application details are also advertised on the council's website. A number of "Responsible Authorities" have also been consulted as part of the process. There was a consultation period of 28 days for representations to be made, the applicant conformed with all the requirements as laid out within the Licensing Act 2003.

4.2 During the consultation process Sussex Police have requested specific conditions to be placed onto the licence if/when it is granted. There is an email trail between Sussex Police and the applicant. A copy of this is included at **Appendix 3**. Sussex Police have also submitted a representation based around the Premises being located within the Cumulative Impact Zone and their concerns that the Premises would not effectively promote the Licensing objectives. A copy of this representation is included at **Appendix 4**.

4.3 Eastbourne Borough Councils Noise Pollution team have also submitted a representation asking for conditions to be attached to the licence if/when granted. A copy of this email is included at **Appendix 5**.

5 **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 **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.

6.2 Whilst each application will be considered on its merits, the Licensing Sub-Committee will act to promote the four licensing objectives and have due regard to:

- Eastbourne Borough Council's Statement of Licensing Policy 2019 – 2024.
- Section 182 Guidance issued by the Department of Culture, Media and Sport.

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 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 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.

6.7 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.

7 Cumulative Impact

7.1 The premises in question are 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’ (any person) that the cumulative affect 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 new licence applications and variations to existing licences, 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 It is stressed that the presumption to refuse an application does not relieve the Responsible Authority or anyone else making a representation of the need to provide supporting evidence in conjunction with a relevant representation. This must be submitted before the Licensing Authority may lawfully consider the effect of the Cumulative Impact Policy.

7.7 The Cumulative Impact Policy can be found within the Council’s Statement of Licensing Policy 2014 – 2019.

8 Representations

8.1 A copy of the representations are included at **Appendix 4 and 5**, however a summary appears below:

<p>‘Interested Parties’</p> <p>No representations have been received.</p>
<p>Representations from Responsible Authorities</p> <p>The following summarises whether representations have been received from responsible authorities:</p> <ul style="list-style-type: none">➤ Sussex Police – Email trail around extra conditions and representation around the premises being based within the CIZ.➤ Eastbourne Borough Council (Specialist Advisor) Environmental Health – conditions asked for if/when the licence is granted.➤ Eastbourne Borough Council (Specialist Advisor) Health and Safety – No representation.➤ Eastbourne Borough Council (Specialist Advisor) Planning – No representation.➤ Eastbourne Borough Council (Specialist Advisor) Licensing - No representation➤ East Sussex Fire and Rescue Service – No representation➤ Area Child Protection Team– No representations➤ Trading Standards (East Sussex County Council) – No representation.➤ Primary Care Trust- No representation

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 appropriate and proportionate on a case by case basis. The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives. The Sub-Committee may not impose any condition unless its discretion has been exercised following receipt of a relevant representation and is satisfied that it is appropriate to promote one or more of the licensing objectives.

9 **Options open to the Sub-Committee**

9.1 The Licensing Sub-Committee shall take the steps it considers appropriate for the promotion of the Licensing Objections and may;

- Modify the conditions of the licence (alter or omit or add new)
- Reject the whole or part of the variation application

9.2 The Sub-Committee are asked to note the procedures relating to this hearing which are contained in The Licensing Act 2003 (Hearing) Regulations 2005.

10 **Legal Considerations**

10.1 Under the Licensing Act 2003 section 34 the holder of a premises licence may apply to the Licensing Authority for the variation of the licence. Under section 35 on such an application the Licensing Authority must grant the application unless relevant representations are made in which case a hearing must be held unless the applicant and each person who has made representations agree that a hearing is unnecessary. The Sub Committee having regard to the representations made shall take such a step as referred to in paragraph 9.1 above as it considers appropriate for the promotion of the licensing objectives.

10.2 Under Schedule 5 Licensing Act 2003 the applicant may appeal if the Sub Committee rejects, in whole or in part, the application to vary the premises licence or the decision to modify conditions. Further, any person who has made relevant representations may appeal if they contend that any variation ought not to have been made or any conditions modified. Any appeals should be made to the Magistrates Court within 21 days of the appellant being notified in writing of the decision.

10.3 The Legal Section considered this Report on 9 December 2019 (IKEN 8796-EBC-MW)

11 **Financial Appraisal**

11.1 The cost of delivering the licensing function is fully covered by the Licensing fees.

12 **Risk management implications**

12.1 There are no risks associated with the content of this report.

13 **Equalities & Fairness Screening**

13.1 An Equality Analysis is not constructive in this instance

14 **Sustainability and/or carbon reduction implications**

14.1 There are no sustainability and/or carbon reduction implications associated with this report.

15 **Human Rights**

15.1 The provisions of the Human Rights Act 1998, must be borne in mind by the Sub-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.

16 **Appendices**

- Appendix 1 - Application for a variation to the premises licence under the Licensing Act 2003.
- Appendix 2 – copy of the current premises licence.
- Appendix 3 – Email trail between Sussex Police and applicant agreeing specific conditions.
- Appendix 4 – Representation from Sussex Police.
- Appendix 5 – Email from Environmental Health asking for specific conditions to be added to the licence if/when granted.
- Appendix 6 – Email trail to confirm the DPS – To Follow.

17 **Background papers**

- Section 182 Statutory Guidance to the Licensing Act 2003 available via: <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- Eastbourne Borough Council Licensing Statement 2019-2024 available via: http://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/224048.pdf
- Human Rights Act 1998