

Report to: Licensing Sub-Committee

Date: 16th March 2021

Title: Application for a new Premises Licence. Chef H, 27-31 Langney Road, Eastbourne BN21 3QA

Report of: Director of Service Delivery

Ward(s): Devonshire Ward

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

Officer Recommendations: To consider representations made against the new Premises Licence application 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 new Premises Licence under the Licensing Act 2003 for Chef H at 27-31 Langney Road, Eastbourne BN21 3QA from Latin Borisov, made on his behalf by his agent Ziya Merton. The application is included along with the plan of the premises at **Appendix 1**.

1.2 This premise hold's a Premises Licence under the Licensing Act 2003, the current licence was suspended in October 2019 due to non-payment of the annual fees. This licence will remain as a suspended licence until it is surrendered by the current licence holders.

2 **The Application**

2.1 An application for the grant of a new premises licence under the Licensing Act 2003 for the following licensable activities:

Late night refreshment (indoor and outdoor)

Monday –Saturday 23:00-04:00

Supply of alcohol (off the premises)

Monday- Sunday 11:00- 23:00

Opening Hours

Monday- Saturday 11:00-04:00

Sunday 11:00- 23:00

3 Licensing Objectives

3.1 When applying for a new 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. Several “Responsible Authorities” have also been consulted as part of the process. There was a consultation period of 28 days, from 21st January 2021 to the 18th February 2021, for representations to be made, the applicant conformed with all the requirements as laid out within the The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.

4.2 During the consultation process Sussex Police have 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 2**.

4.3 Eastbourne Borough Councils Licensing team have submitted a representation based around the Cumulative Impact Zone. A copy of this email is included at **Appendix 3**.

4.4 There have also been four representations submitted by interested parties. These are included at **Appendix 4 to 7**.

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

A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant (i.e. more probable than not).

6 **Eastbourne Borough Council's Statement of Licensing Policy & Section 182 Guidance**

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 Home Office.

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 2019 – 2024.

8 **Representations**

8.1 A copy of all the representations are included at **Appendix 2 to 7**, however a summary appears below:

'Interested Parties'

Four representations have been received, generally based around crime and disorder and the public nuisance licensing objectives. It has been agreed that some of their personal details need not be supplied to the applicant as the Council accepts their justified concerns.

Representations from Responsible Authorities

The following summarises whether representations have been received from responsible authorities:

- **Sussex Police** –Representation around the premises being based within the CIZ.
- **Eastbourne Borough Council (Specialist Advisor) Environmental Health** – No representation
- **Eastbourne Borough Council (Specialist Advisor) Health and Safety** – No representation.
- **Eastbourne Borough Council (Specialist Advisor) Planning** – No representation.
- **Eastbourne Borough Council (Specialist Advisor) Licensing** – Representation around the premises being based within the CIZ
- **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 On the basis of the representations, it is considered unlikely that this application will be successfully mediated before the Sub-Committee hearing.

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;

- Grant the Licence in the same terms as it was applied for.
- Grant the Licence, but modify the conditions as appropriate for the promotion of the licencing objectives
- Grant the Licence, but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives
- Reject the 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 as

amended.

9.3 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

9.4 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.

10 **Legal Considerations**

10.1 Under section 18 Licensing Act 2003 (as amended), following receipt of an application for a premises licence if relevant representations are received, and unless all parties agreed that a hearing is unnecessary, then the Licensing Authority must hold a hearing. At the hearing the Sub Committee shall having regard to the representations take such steps as it considers appropriate for the promotion of the licensing objectives. The relevant options are outlined in para 9.1 of this Report.

10.2 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the 2003 Act. These include, but are not limited to, having due regard to the Equality Act 2010 and the Human Rights Act 1998.

10.3 The Legal Section considered this Report on 2 March 2021 (Iken-9899-EBC-MW)

11 **Right of Appeal**

11.1 Under section 81 and Schedule 5 of the 2003 Act there is a right of appeal to the Magistrates' Court in respect of applications for new licences. This right of appeal is open both to the applicant and to any person who has made relevant representations. The appeal application must be made within 21 days of the written notification of the Sub Committee's decision.

12 **Financial Appraisal**

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

12.2 A decision made by the Sub Committee may be appealed by any party to the proceedings to a Magistrates' Court. Costs associated with this matter and incurred by any party, may in certain circumstances be awarded against the Council.

13 **Risk management implications**

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

14 **Equalities & Fairness Screening**

14.1 An Equality Analysis is not constructive in this instance.

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

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

16 **Appendices**

- 16.1
- Appendix 1a and 1 b - Application (a) and plan (b) for a new premises licence under the Licensing Act 2003
 - Appendix 2 - Sussex Police report
 - Appendix 3 - Local Authority Licensing report
 - Appendix 4 - interested party representation
 - Appendix 5 - interested party representation
 - Appendix 6 - interested party representation
 - Appendix 7- interested party representation

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