

Report to: Licensing Sub-Committee

Date: 18th May 2021

Title: Application for a new Premises Licence. Dirty Burger Brothers Ltd, 2 Old Orchard Road, Eastbourne BN21 1DB

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 Dirty Burger Brothers LTD at 2 Old Orchard Road, Eastbourne BN21 1 DB from Matthew Howard, on behalf of Dirty Burger Brothers Ltd. This premises are not within the Cumulative impact zone. The application is included along with the plan of the premises at **Appendix 1**.

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 (outdoor)

Monday- Wednesday 23:00-01:00

Thursday- Sunday 23:00-04:00

Supply of alcohol (off the premises)

Monday- Sunday 12:00- 23:00

Opening Hours

Monday- Wednesday 05:00-01:00

Thursday- Friday 05:00- 04:00

Saturday- Sunday 09:00- 04:00

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 24th March 2021 to the 20th of April 2021, for representations to be made, the applicant conformed with all the requirements as laid out within The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.
- 4.2 During the consultation process Sussex Police and the applicant have exchanged several emails to modify the times and add additional conditions that would effectively promote the Licensing objectives. These modifications would be made if the licence is granted. A copy of this email trail is included at **Appendix 2**.
- 4.3 Agreed modified times:

Late night refreshment

Thursday 23:00-24:00.

Friday - Sunday (only on Sundays followed by a Bank Holiday Monday) 23:00 - 02:00.

Opening hours

Sundays - Wednesday 05:00-23:00.

Thursday 05:00-00:00.

Friday 05:00-02:00.

Saturday - Sunday (only on Sundays followed by a Bank Holiday Monday) 09:00-02:00.

4.4 There have also been two representations submitted by interested parties. These are included at **Appendix 3 and 4.**

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 Representations

7.1 A copy of the representations is included at **Appendix 3 and 4**, however a summary appears below:

<p>'Interested Parties'</p> <p>Two representations have been received, these representations have made comments under each of the four licensing objectives.</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 included at Appendix 2.➤ 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 – 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.**

7.2 Following the representations from the interested parties' mediation was attempted. The emails that have been exchanged are included at **Appendix 5**. At the time of writing this report mediation was still being attempted but no agreement had been reached.

8 Options open to the Sub-Committee

8.1 The Licensing Sub-Committee shall take the steps it considers appropriate for the promotion of the Licensing Objectives 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.

8.2 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.

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 Legal Considerations

9.1 Under section 18 Licensing Act 2003 (as amended), following receipt of an application for a premises licence if relevant representations are received, unless all parties agree that a hearing is unnecessary, 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. 8.1 of this Report.

9.2 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.

9.3 The Legal Section considered this Report on 4 May 2021 (IKEN-10112-EBC-MW).

10 Right of Appeal

10.1 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.

11 Financial Appraisal

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

11.2 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.

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 Appendices

- Appendix 1a & 1b - Application (a) and plan (b) for a new premises licence under the Licensing Act 2003
- Appendix 2 - Sussex Police email trail
- Appendix 3 - Interested party representation
- Appendix 4 - Interested party representation
- Appendix 5 - Emails engaging in mediation.

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