

**Report to:** Licensing Sub-Committee

**Date:** 6 January 2022

**Title:** Application for a new Premises Licence. 16 Terminus Road Eastbourne BN21 4QS

**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 recommendation(s):** 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 16 Terminus Road Eastbourne BN21 4QS from Mr Anthonippillai Antonvijayarajah. This premises is 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:

### **Sale by Retail of Alcohol (off the premises)**

Every Day 09:00 - 23:00 hrs.

### **Opening Hours**

Every Day 09:00 - 23:00 hrs.

### **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 10 November 2021 to the 7 December 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 agreed the wording of conditions, which if the licence was granted, would be added to the licence and these relate to Prevention of Crime & Disorder and Protection of Children from Harm. A copy of this email trail is included at **Appendix 2**.
- 4.3 There have also been three representations submitted by interested parties. These are included at **Appendix 3**. Set out at **Exempt Appendix 4** are the names and addresses of those making representations for the information of the Committee.

### **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
- 5.2 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 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’ (any person) 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.

7.5 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.

7.6 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.

7.7 It is stressed that the presumption to refuse an application does not relieve the Responsible Authority or “Interested Party” 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.

7.8 The Cumulative Impact Policy can be found within the Council’s Statement of Licensing Policy 2019 – 2024.

## **8 Representations**

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

8.2 Four representations have been received, these representations have made comments under Prevention of Crime & Disorder and Prevention of Public Nuisance

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

- Sussex Police - No representation.
- 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.

## **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 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.

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 Financial appraisal**

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

- 10.2 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. The impact of these additional costs (if any) will therefore need to be met from within existing revenue budgets.

## **11 Legal implications**

- 11.1 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. 9.1 of this Report.
- 11.2 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the Licensing Act 2003. These include, but are not limited to, having due regard to the Equality Act 2020, the Human Rights Act 1998 and the Crime and Disorder Act 1998.
- 11.3 Some of the information included in the representations should be regarded as not relevant to a licensing application under the Licensing Act 2003. However, representations have been reproduced in their entirety and it is for Members to decide how much weight, if any, should be attached to some of the points made.
- 11.4 Under section 181 and Schedule 5 Licensing Act 2003 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 Committees decision to the appellant.
- 11.5 The Legal section considered this Report on 17 December 2021 (IKEN 10644-EBC-MW).

## **12 Risk management implications**

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

## **13 Equality analysis**

- 13.1 An Equality Analysis is not constructive in this instance.

## **14 Environmental sustainability implications**

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

## **15 Appendices**

15.1 Appendix 1 - Application and plan for a new premises licence under the Licensing Act 2003.

Appendix 2 - Police Agreement.

Appendix 3 - Representations from interested parties.

Appendix 4 - Unredacted Representations from Interested Parties (Exempt under Paragraphs 1 and 2 of Schedule 12a).

## **16 Background papers**

16.1 The background papers used in compiling this report were as follows:

- Section 182 Statutory Guidance to the Licensing Act 2003 available [here](#)
- Eastbourne Borough Council Licensing Statement 2019-2024 available [here](#)
- Human Rights Act 1998.
- Equality Act 2010.
- Crime and Disorder Act 1998.