

Decision of Licensing Sub Committee. Hearing 11 May 2022

Application for a premises licence at The Rosy Lee, 379 Seaside, Eastbourne, BN22 7RP

The hearing concerned a premises licence application for The Rosy Lee, 379 Seaside, Eastbourne, BN22 7RP, made by Vu-AR Ltd. The application was for the sale by retail of alcohol on and off the premises every day between 07:30hrs and 23:00hrs. The application also had a seasonal variation so that on Christmas Eve and New Year's Eve the licensable activity would end at 01:00hrs on the following day.

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office Guidance, and the rules of natural justice.

It also took into account the information contained within the Specialist Advisors report, presented by Dean Love.

Due regard by the Licensing Sub Committee was also given to the relevant written representation of local residents. Those making the representation were not in attendance at the hearing. The representation was that the grant of the premises licence would directly affect them by exacerbating the noise and anti-social behaviour they were already experiencing from the nearby basketball court.

The Sub Committee considered the application and the oral representations made at the hearing by the Applicant, Mr Kevin Gillett. Those were that he understood that there were issues at the basketball court referred to by the representation but stated that they were not directly linked to the premises and any anti-social activities there were out of his control. He stated that those who may be causing anti-social behaviour in the area were children and thus he would not be selling them alcohol. Mr Gillett pointed out that those making the representation were not his immediate neighbours. He also pointed out that there were other licensed premises in the area selling alcohol, one being about 50 yards away from his premises, and that he believed that alcohol could be more cheaply bought at those other premises. Mr Gillett accepted that there would be an increase in customers at the premises. He stated that he would do his best to ensure that his customers were respectful of neighbours. He stated that he had spoken to the Police and mediated various conditions and he contended that the Police had advised him that they considered the premises were "low risk". Mr Gillett pointed out that the Police had agreed that there was no necessity to condition the installation of CCTV at this time, but that he intended to install comprehensive CCTV coverage at the premises once refurbishments at the premises had been completed.

In answer to a question, the Applicant stated that he had asked for the licensable activities to start at 07.30hrs as a belt and braces approach but that he had no intention of selling alcohol at that time. In answer to a question concerning why he had applied for off sales, the Applicant stated that he was planning to sell food for delivery and take away and that customers wanted to have a complete service, so they could order food and drink at the same time.

The Sub Committee noted that no plan of the premises had been included in the Report and that was provided to the Sub Committee and confirmed with the Applicant before a decision was made.

The Sub Committee noted that no representations had been received from any Responsible Authorities but that the Applicant had agreed mediated conditions with the Police and those were provided to and considered by the Licensing Sub Committee before a decision was made.

In its deliberations the Sub Committee considered which decision would be appropriate and proportionate from the options outlined in para. 8.1 of the Report.

Decision

The Sub Committee resolved to grant the premises licence but with the modified conditions as mediated with the Police added to the licence, and to modify the hours of licensable activities from a start time of 07:30hrs to 9:00hrs.

For the sake of complete clarity, the mediated conditions agreed between the Applicant and the Police prior to the hearing are:-

Training/Authorisation

- a. The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such product: The lawful selling of age restricted products. Refusing the sale of alcohol to a person who is drunk.
- b. Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 12 weeks, with the date and time of the verbal reinforcement/refresher training documented.
- c. All such training undertaken by staff members shall be fully documented and recorded and signed by both the employee and the DPS. All training records shall be kept on the premises and made available to Sussex Police, officer of the Local Authority and the Trading Standards team upon request.
- d. A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date of such authorisation commences.

Challenge 25

- a. The premises will operate an age verification policy set at a minimum of 25 years (e.g. "Challenge 25") whereby any person attempting to buy alcohol who appears to be under the specified age e.g. 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU States bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram.
- b. Signage advertising the age verification, or 'Challenge 25' policy will be displayed in prominent locations in the premises.

Incident/Refusal Log

- a. An incident/refusal log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at least once every 4 weeks.
- b. The log book should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the Police. An incident will be defined as one which involves an allegation of a criminal offence.
- c. Feedback should be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.
- d. Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant. The log will be kept at the premises for a minimum of twenty-four (24) months.

Café Bar

- a. Alcohol shall only be supplied by waiter/waitress service to people seated at tables.
- b. Food should be available at all times when the premises is open and trading. The primary use of the premises shall be as a café, not be that of a bar and any promotions and advertising will refer to it as such.

Outside Areas

- a. Customers will not be permitted to take alcohol outside the premises to consume whilst smoking, congregating, or eating on the pavement outside the premises.
- b. No open vessels shall be allowed off the premises.

Deliveries

- a. Deliveries of goods necessary for the operation of the business shall be carried out at such time or in such matter as to prevent nuisance and disturbance to nearby residents. The same applies to waste collections.
- b. All alcohol orders (whether online, completed by the customer on paper, via the phone or verbally face to face) will contain age verification, whereby the customer will be asked to confirm that they are over 18 and a tick box must be marked to confirm this.
- c. All deliveries of alcohol must be made by a person over the age of 18 years.
- d. Alcohol shall not be delivered to anywhere other than a recognisable permanent business or residential address.
- e. In the event that there is no one to accept delivery, alcohol shall not be left on the doorstep or any other place. It can, however, be left securely with a neighbour as long as they are over 18.
- f. Each and every delivery must be signed for and the person delivering the alcohol must request appropriate photographic ID from the recipient if that person is believed to be under 25 years of age. If no such ID is produced the alcohol will not be delivered.
- g. Delivery staff must be trained in delivery of alcohol and Challenge 25 prior to commencing deliveries.

For the sake of complete clarity, these mediated conditions will be added to the relevant extant conditions offered on the application which are:-

1. Clear and legible notices will be prominently displayed to remind customers to leave quietly and have regard to the neighbours.
2. Any incident of a criminal nature that may occur on the premises will be reported to the Police.
3. Staff will be trained to be alert to any potential danger to customers and react accordingly. If they are unable to quickly defuse the situation without risk to customers or staff, then they will be instructed to call the Police.

Reasons for decision

The Sub Committee appreciated the concerns of the local residents who made the representation. However, on balance they did not consider that the premises licence would undermine the licensing objectives and in particular the prevention of public nuisance. It accepted that it was not likely, from the Applicant's contentions at the hearing, that there would be a clear link between any current nuisance or anti-social behaviour in the area if the premise licence application was granted.

The Sub Committee had concerns about the appropriateness of the applied for licensable start time of 07:30hrs. It noted that the Applicant's statement at the hearing that he had no intention of selling alcohol at that time. The Sub Committee therefore decided a later start time would be more appropriate to promote the licensing objectives.

The Licensing Act provides a right of appeal to the Magistrates' Court in respect of an application for a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The decision will be provided in writing to all parties within five working days of the decision being made.