

**Body:** Licensing Sub Committee  
**Date:** 1<sup>st</sup> October 2014  
**Subject:** Application For a Variation to Premises Licence For Galleria Ristorante, 117-119 Seaside Road, Eastbourne  
**Report Of:** Jay Virgo, Senior Specialist Advisor  
**Ward(s)** Devonshire Ward  
**Purpose** To determine an application for a variation to a premises licence under the Licensing Act 2003.  
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## **1.0 Introduction & Background**

- 1.1 An application has been received by Eastbourne Borough Council as Licensing Authority, for a variation to the premises known as Galleria Ristorante, 117-119 Seaside Road Eastbourne BN21 3PH
- 1.2 The premises currently operates as a restaurant under the Licensing Act 2003.

## **2.0 The Application**

- 2.1 An application for grant of a variation to the premises licence under the Licensing Act 2003 has been sought for the following activities:

### **Live music (on the premises only)**

10:00- 05:00 hours Monday – Sunday

### **Recorded music (on the premises only)**

10:00- 05:00 hours Monday – Sunday

### **Provision of facilities for dancing (on the premises only)**

10:00- 05:00 hours Monday-Sunday

### **Late night refreshment (on and off the premises)**

23.00- 05.00 hours Monday - Sunday

### **Supply of alcohol (On the premises only)**

10:00- 05:00 hours Monday – Sunday

### **Open to the Public**

10.00– 05.00 hours Monday – Sunday

### **3.0 Licensing Objectives**

- 3.1 When submitting an application for a variation to a 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** and also includes a copy of the current premises licence.
- 3.2 A new plan of the premises was not included as part of the application so the current plan is included at **Appendix 2**.

### **4.0 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. A number of "Responsible Authorities" have also been consulted as part of the process, allowing a consultation period of 28 days for representations to be made.
- 4.2 In this instance, as a result of the consultation process, a number of representations have been received. These are detailed at Section 8 of this report.

### **5.0 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

### **6.0 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 2014 – 2019 available via:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/>

- Section 182 Guidance issued by the Department of Culture Media and Sport, (revised in June 2014) available via:

<https://www.gov.uk/government/publications/revised-guidance-issued-under-section-182-of-the-licensing-act-2003>

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 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.

#### 6.7 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 from accessing 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.

### **7.0 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' 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.

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 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.
- 7.6 The Cumulative Impact Policy can be found within the Council's Statement of Licensing Policy 2014 – 2019.

## **8.0 Representations**

- 8.1 A full copy of all representations is included at **Appendix 3**, however a summary appears below.

<p><b>Interested Parties</b></p> <p>There have been <b>2</b> representations from members of the public:</p> <p style="text-align: center;"><b>Mr S Guest</b> <b>Mr K Mitchell</b></p> <p>The representations centre on the prevention of public nuisance (noise) Licensing Objective.</p>
<p><b>Representations from Responsible Authorities</b></p> <p>There has been <b>3</b> representation's from responsible authorities:</p> <ul style="list-style-type: none"><li>➤ <b>Sussex Police – Representation attached.</b></li><li>➤ <b>Eastbourne Borough Council Health and Environment Team – Representation attached.</b></li><li>➤ <b>Eastbourne Borough Council Health and Safety Department – No representation.</b></li><li>➤ <b>Eastbourne Borough Council Planning Department– No</b></li></ul>

- representation.
- **Eastbourne Borough Council Licensing Team- Representation attached.**
- **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 necessary, proportionate and reasonable on a case by case basis.
- 8.5 The applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.
- 8.6 There has also been information forwarded from Eastbourne Borough Councils planning department. This includes the planning conditions attached to the premises. This is included at **Appendix 4**.

## **9.0 Options open to the Sub Committee**

- 9.1 The Sub Committee must have regard to the following:
- Eastbourne's Statement of Licensing Policy 2014-2019;
  - Statutory guidance as amended in June 2014, under Section 182 of the Licensing Act 2003;
  - Representations from any Responsible Authority;
  - Representations from "interested parties";
  - Representations from Ward Councillors.
  - The application and supporting material.
- 9.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:
- Grant the application in full as requested;
  - Grant the application but modify it:

- By altering hours or activities;
  - Adding conditions as necessary, or
  - Omit parts as considered necessary for the promotion of the Licensing Objectives.
- Reject the whole or part of the application.

## **10.0 Legal Considerations**

- 10.1 The framework for the issue, variation and/or modification to applications is made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act, amended in June 2014. This Guidance is provided in order to assist the Council in carrying out functions under the Act.
- 10.2 Furthermore, the Licensing Sub Committee must have regard to Eastbourne Borough Council's Statement of Licensing Policy 2014-2019.

## **11.0 Human Rights**

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

## **Background Material**

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (June 2014)
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council Licensing Statement 2014-2019
- Human Rights Act 1998

Licensing hearing/galleria Ristorante