

**Report to:** Licensing Sub-Committee

**Date:** 19 March 2024

**Title:** Application for a new Premises Licence for Himalayan Fusion 128 Seaside Road Eastbourne BN21 3PF

**Report of:** Chief Executive

**Ward(s):** Devonshire

**Purpose of report:** To consider a representation made against the new premises licence application under the Licensing Act 2003 and make a decision on the application

**Officer recommendation(s):** That the Licensing Sub-Committee determine an application for a new premises licence under the Licensing Act 2003 for Himalayan Fusion 128 Seaside Road Eastbourne BN21 3PF

**Reasons for recommendations:** Relevant representation 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 Himalayan Fusion 128 Seaside Road Eastbourne BN21 3PF. The application is included at **Appendix A**.
- 1.2 Alongside the application a plan of the premises was submitted and this can be found at **Appendix B**.
- 1.3 The premises is a licensed restaurant & bar with internal seating for approx. 40 customers.

## **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 (on and off the premises)**

Every Day 10:00 – 23:30

**Seasonal variation:** Until 01:00 on New Years Eve

**Recorded Music (indoors)**

Every Day 08:00 – 00:00

**Seasonal variation:** Until 01:00 on New Years Eve

**Opening Hours**

Every Day 08:00 – 00:00

**Seasonal variation:** Until 01:00 on New Years Eve

- 2.2 The applicant amended the hours on 21 February 2024 as follows (See Appendix C)

**Sale by Retail of Alcohol (on and off the premises)**

Every Day 10:00 – 22:30

**Seasonal variation:** Until 01:00 on New Years Eve

**Recorded Music (indoors)**

Every Day 08:00 – 23:00

**Seasonal variation:** Until 01:00 on New Years Eve

**Opening Hours**

Every Day 10:00 – 23:00

**Seasonal variation:** Until 01:00 on New Years Eve

**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 A**.

**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. Responsible Authorities have also been consulted as part of the process. There was a consultation period of 28 days, from the 25 January 2024 until midnight on 22 February 2024, 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 No mediation has been advised to the Licensing Officer at this time.

## **5 Representations**

5.1 One representation was made during the consultation period under the licensing objectives of the Prevention of Crime & Disorder and Prevention of Public Nuisance. This can be found at **Appendix D**.

5.2 Sussex Police and the applicant have agreed conditions under the Prevention of Crime & Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children from Harm. This can be found at **Appendix E**.

5.3 Members are asked to note that not all the information provided within the representation valid against the four Licensing Objectives within the Licensing Act 2003.

## **6 The Decision Making Process - The Licensing Objectives**

6.1 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

6.2 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).

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

7.1 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](#).

7.2 Members are asked to consider, in particular, sections 11, 12, 13 & 14 of the Statement of Licensing Policy when making a decision on this application.

## **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 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 **Financial appraisal**

9.1 There are no specific financial implications arising from this application as the cost of delivering the licensing function is fully covered by the Licensing fees.

9.2 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.

## 10 **Legal implications**

10.1 Under section 18 Licensing Act 2003 (as amended), following receipt of an application for a premises licence, if a relevant representation is 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.

10.2 The Licensing Sub Committee should be mindful of the requirements and responsibilities placed upon 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 relevant parts of the Equality Act 2010, the Human Rights Act 1998, and the Crime and Disorder Act 1998.

10.3 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 premises licences. This right of appeal is open both to the Applicant and to any person who has made a relevant representation. The appeal application must be made within 21 days of the written notification of the decision to the appellant.

10.4 The Legal Section considered this Report on 26 February 2024 (Iken 12783-EBC-MW).

## **11 Risk management implications**

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

## **12 Equality analysis**

12.1 An Equality Analysis is not constructive in this instance.

## **13 Environmental sustainability implications**

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

## **14 Appendices**

14.1 Appendix A - Application form

Appendix B - Plan of premises

Appendix C - Amendment of hours by applicant

Appendix D - Representation

Appendix E - Agreed conditions with police

## **15 Background papers**

15.1 Section 182 Statutory Guidance to the Licensing Act 2003 available [here](#)

Eastbourne Borough Council Licensing Statement 2010 - 2024 available [here](#)

Human Rights Act 1998

Equality Act 2010

Crime and Disorder Act 1998