

Body: Licensing Sub Committee
Date: 7th September 2010
Subject: Big Apple, 74 Beach Road, Eastbourne, BN22 7AB
Designated Premises Supervisor Mr David Carter
Report Of: Karen Plympton, Licensing Manager
Ward(s) Devonshire Ward
Purpose To determine a review of a premises licence under the Licensing Act 2003.
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1.0 Background

- 1.1 The site currently known as Big Apple, 74 Beach Road, Eastbourne has operated as a licensed premise in Eastbourne for a number of years under various operators and managers. The premise operates as a traditional pub, and serves food. It also provides live music on a regular basis.
- 1.2 The building is owned by Enterprise Inns, Solihull, who lease the business to tenants. The property is currently leased under a tenancy agreement to 'The Big Apple SE Limited.'
- 1.3 In February 2010, "The Big Apple SE Limited" applied by way of variation, to allow for live music to continue until midnight on Friday and Saturday. The application sought to include an outside decked area within the curt ledge of the licensed area. This was approved, subject to the imposition of a series of operating conditions required by Sussex Police and the Council's Health and Environment (Noise) Team.
- 1.4 A copy of the premises licence and a layout plan is included at Appendix 1.

2.0 Partnership Approach

- 2.1 A series of meetings have been held with Mr Greg Fitzpatrick of Enterprise Inns, and a series of former tenants involved in the Big Apple Pub, Beach Road, Eastbourne on 8th and 15th July and 20th August 2010. Members of the Council's Licensing Team, Noise Team and Sussex Police also attended to try and resolve matters in advance of Review proceedings.
- 2.2 Despite repeated attempts to engage with tenants and Enterprise Inns, breaches of the licence, noise, nuisance and disturbance continued, alongside poor management control and supervision of the site. As a result, an application for a review of the premises licence is being sought.

3.0 Review Application & Consultation Process

- 3.1 An application for a Review under the Licensing Act 2003 has been made by the Health and Environment (Noise) Team. This was lodged on the 21st July 2010, under the prevention of public nuisance licensing objective.

- 3.2 The review application was also served on the Licensing Authority, the person who holds the Premises Licence, and all other Responsible Authorities as specified under the Licensing Act 2003.
- 3.3 The proper notices advertising the application for review of the premises licence were also prominently displayed on the premises, at Eastbourne Town Hall, and the Council Offices, 1 Grove Road in a place where they could be clearly seen by members of the public.
- 3.4 A notice was also been posted on Eastbourne Borough Council's website with regard to the review application, in order to inform the wider public of the application. Proper consultation in accordance with the requirements of the Licensing Act 2003 has been undertaken for the required period.
- 3.5 A copy of the application for review is attached at Appendix 2.
- 3.6 As a result of the consultation process, further representations have been received from "interested parties," namely local residents living in the vicinity of the premises, and Sussex Police as a Responsible Authority.

4.0 Overview of Representations

- 4.1 The Health and Environment (Noise) Team sought the Review due to noise nuisance and disturbance under the prevention of public nuisance Licensing Objective. A copy of their representation is included at Appendix 2.
- 4.2 Sussex Police make a representation under the prevention of crime and disorder Licensing Objective. A full copy of their representation is included at Appendix 3, and provides an overview of action taken in respect of the site to date.
- 4.3 It includes suggested mechanisms that could be used to address issues and promote the Licensing Objectives. These include:
- Mr Carter to be removed as the Designated Premises Supervisor (DPS), and that any new DPS is approved by Sussex Police prior to appointment. **NB. On 26th August 2010, an application was lodged to nominate Mr Greg Fitzpatrick of Enterprise Inns as the new DPS.**
 - The Premises Licence to be suspended for a minimum of one month in order that the new DPS can conduct appropriate staff training to fully acquaint themselves with all of the conditions on the Premises Licence and ensure compliance. Such a suspension would also act as a deterrent to further breaches of the licence.
- 4.4 Representations have also been lodged by:
- Mrs Hitchen of Beach Road, as a person living in the vicinity of the premises. Her concerns centre on noise, nuisance and disturbance at the premises, alongside the poor conduct of management and staff. Her representation is supported by Ms Wheeler and Ms Briggs, daughters of Mrs Hitchen. A copy of the representations received is included at Appendix 4.
 - Mr Macperson of Royal Parade, as a person living in the vicinity of the premises under the prevention of public nuisance, public safety and the prevention of crime and disorder licensing objectives.

- Mr Dugan of Royal Parade, as a person living in the vicinity of the premises under the prevention of public nuisance, public safety and the prevention of crime and disorder licensing objectives.

4.5 All those making representations and those responding to representations are entitled to attend the hearing in support of their case.

4.6 It is understood that Mr Fitzpatrick of Enterprise Inns will be accompanied by Gosschalks Solicitors, and Mrs Hitchen by Ms Briggs and Ms Wheeler. Mr Albon of the Council's Health and Environment (Noise Team) will also be in attendance.

5.0 The Hearing

5.1 The Licensing Act 2003 (Hearings) Regulations 2005 state that a hearing must be held by the Licensing Authority within 20 working days after the initial 28 day consultation period.

5.2 A determination on the review application must be made no later than 2 months after the day of the original giving of notice by relevant parties seeking a review of the premises licence the premises licence.

6.0 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

7.0 Commentary on Eastbourne Borough Councils Statement of Licensing Policy

NB. Copies previously circulated as reference material to Members. It can also be located at www.eastbourne.gov.uk/licensing.

7.1 Whilst each application will be considered on its merits, the Licensing Sub Committee will have due regard for the Eastbourne Borough Council Licensing Statement, Section 182 Guidance revised in January 2010, in respect of the Licensing Act 2003, and the promotion of the Licensing Objectives.

7.2 The Prevention of Crime and Disorder

The Councils' Statement of Licensing Policy states that a premises 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 of such and imposition of conditions may be considered and applied as appropriate In order to promote the Licensing Objectives.

7.3 Public Safety

The Councils' Statement of Licensing Policy states that the premise Operating Schedule should include steps to ensure the physical safety of patrons and the overall suitability of the premise. This might include the imposition of conditions regarding capacity and mechanisms to promote responsible drinking and safer socialising. The restriction of types of licensable activity, hours of such and imposition of conditions may be considered and applied as appropriate.

7.4 **Prevention of Public Nuisance**

The Councils' Statement Of Licensing Policy states that within the Operating Schedule, operators will be required to demonstrate how they intend to prevent nuisance arising, disturbance occurring and the steps taken to protect amenities. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

7.5 **Protection of children from harm**

The Councils' Statement Of Licensing Policy requires that operating schedules 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.

7.6 The Eastbourne Licensing Policy goes on to state that:

"Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act."

8.0 Options open to the Committee

8.1 When determining the application, the Licensing Sub Committee must have regard to the contents of the review application and any relevant representations contained therein. At this hearing the Licensing Authority must:

- Consider the request for review
- Consider any relevant representations and associated evidence accordingly.
- Have regard to the Council's Statement of Licensing Policy
- Have regard to Section 182 Guidance, as revised in January 10 2010 issued in conjunction with the Licensing Act 2003.
- Where appropriate, take such steps as is considered necessary for the promotion of the Licensing objectives.

8.2 These steps are:

- To modify the conditions of the licence
- To exclude a licensable activity
- To remove the Designated Premises Supervisor from the licence
- To suspend the licence for a period not exceeding 3 months, or
- To revoke the licence.

8.3 The determination, if not completed at the hearing, shall be provided within 5 working days. Such a determination does not have effect until after the appeal period or, if an appeal is lodged, until after the appeal is disposed of.

9.0 Legal Considerations

9.1 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore beyond the direct control of the individual, club or business to which the licence, certificate or authorisation relates.

9.2 Licensing is about the appropriate management and control of licensed premises, qualifying clubs and temporary events and the associated licensable activities governed by the Licensing Act 2003. Any conditions attached to licences, certificates and permissions will focus on matters which are within the control of the Designated Premises Supervisor and/or their nominated representative, and will centre on the premises themselves and their immediate vicinity.

9.3 When considering these terms and conditions the Sub Committee will primarily focus on the direct impact of the activities taking place at the licensed premise on members of the public living, working or engaged in activity in the area concerned in addition to the promotion of the Licensing Objectives.

10.0 Human Rights

10.1 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. 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

- Licensing Act 2003
- LACORS Guidance – Committee Hearings
- Section 182 Statutory Guidance to the Licensing Act 2003, revised January 2010.
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council Licensing Statement
- Human Rights Act 1998