

**BODY:** LICENSING SUB COMMITTEE

**DATE:** 9<sup>th</sup> February 2011

**SUBJECT:** Application for a Variation to a Premises Licence for Funktion Rooms, 2a-2b Pevensey Road, Eastbourne

**REPORT OF:** Karen Plympton, Licensing Manager

**Ward(s):** Devonshire Ward

**Purpose:** To determine an application for a variation to a premises licence under the Licensing Act 2003.

**Contact:** Miss Karen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937.

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## **1.0 Introduction**

- 1.1 An application has been received by Eastbourne Borough Council's, Licensing Team, for the premises known as Funktion Rooms, 2a-2b Pevensey Road, Eastbourne.
- 1.2 The premises is currently closed, but is licensed to sell alcohol, provide various forms of regulated entertainment and late night refreshment.
- 1.3 The variation application follows an Expedited Summary Review Hearing on 16<sup>th</sup> July 2009, where the licence was immediately suspended following a serious incident at the premise. A further hearing was held on 23<sup>rd</sup> July 2009, following representations submitted by the then premises licence holder. Having heard from the then premises licence holder and Sussex Police, the Licensing Sub Committee imposed a series of additional conditions on the premises licence, all of which remain in force to date. A copy of the current premises licence and the conditions attached to the premises licence can be found at Appendix 1.

## **2.0 The Application**

- 2.1 An application for a variation to a premises licence has been lodged under the Licensing Act 2003. Permission to revise the premises licence has been sought as follows:

"To approve internal alterations at the premise as described in the enclosed plans deposited with the Authorities. Such plans to have effect once the works are complete as notified to the Council in writing."

- 2.2 In short, the variation application seeks permission to modify the

internal layout of the premise and includes the installation of a top floor smoking terrace for not more than 20 persons at any one time.

- 2.3 If granted, the variation application will result in an increase in overall occupancy levels to approximately 560 persons, including staff.
- 2.4 This figure will be subject to a satisfactory fire risk assessment, which is being scrutinised by East Sussex Fire and Rescue Service.
- 2.5 The previous maximum occupancy level set at the time of the Expedited Review was 350 persons including staff, and was subsequently further reduced by East Sussex Fire and Rescue Service to 250 persons including staff, at which point the premises closed for business.

### **3.0 Licensing Objectives**

- 3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe any further steps they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The applicants' declaration can be seen at Section P of the application form. This is included at Appendix 2. Members will note that there are no further measures proposed.
- 3.2 A layout plan of the premises is included at Appendix 3.

### **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" are also consulted as part of the process, allowing a consultation period of 28 days for representations to be made. In this instance, as a result of the consultation process, representations have been received. These representations can be found at Appendix 4.

### **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
- 5.2 Whilst each application will be considered on its merits, the Licensing Sub Committee will have regard of the Eastbourne Borough Council Statement of Licensing Policy. This can be downloaded via [www.eastbourne.gov.uk](http://www.eastbourne.gov.uk). In addition, the Sub Committee will

consider the relevant law and Section 182 Guidance issued in respect of the Licensing Act 2003. The Sub Committee will act to promote the 4 Licensing Objectives.

- 5.3 It will also consider any history it considers relevant in relation to the premise, along with the likelihood of noise, nuisance, crime and disorder at the site or in the vicinity of the site. In addition, the Sub Committee will consider issues impacting upon public safety and strategies to protect children from harm.

## **6.0 Representations**

- 6.1 A copy of any valid representations are included at Appendix 4, however a summary appears below. All those making representations are entitled to attend the hearing to support their representation.

### **Representation from “interested parties” living in the vicinity of the premises.**

- Adrian Ley, the Chair of the Town Centre Neighbourhood Panel makes a representation under all four of the Licensing Objectives.

### **Representations from Responsible Authorities**

- Sussex Police – Inspector Johnson lodged a representation in relation to the variation of the premises licence, however this has been withdrawn following a series of meeting with the applicants, their Solicitor and the proposed operator of the site. This is subject to the following additional conditions being attached to any premises licence, if granted:

1) Any person who has left the premises to smoke shall be refused re-entry.

2) The Top Floor Smoking Terrace shall be limited to a maximum capacity of 20 persons at any one time. It shall be managed and supervised at all times that the premises is open to the public by a Security Industry Authority Registered Door Supervisor. This area will be clearly delineated by way of suitable fencing agreed with Sussex Police.

3) A written Under 18 Events Policy to be prepared, agreed and implemented in conjunction with the Council’s Licensing Manager and Sussex Police prior to an under 18s event takes place at the premises.

4) A written Disorder Policy to be prepared, agreed and implemented in conjunction with the Council’s Licensing Manager and Sussex Police. This includes effective crowd and queue control measures which will be in place to effectively manage people congregating in the direct vicinity prior to the premises being open to the public, including those that are smoking.

5) The Premises Licence Holder or their nominated representative shall agree to participate in Ion Track initiatives or other Police Operations to ensure the effective promotion of the Licensing Objectives.

6) A Personal Licence Holder will be on the premises whenever licensable activities are taking place.

Furthermore, Sussex Police require that the "Challenge 21 Policy " relating to age verification be replaced by the "Challenge 25 Policy ."

- East Sussex Fire and Rescue Service – No representations received.
- Council Health and Environment (Noise) Team – No representations received.
- Council Health and Safety Department – No representations received.
- Council Planning Department – No representations received.
- Sussex Area Child Protection Team – No representations received
- Trading Standards, East Sussex County Council – No representations received.

6.2 The Licensing Sub Committee may consider other matters that they consider may negatively impact upon the Licensing Objectives. It may exercise their powers to impose further conditions which are reasonable and proportionate, or take other action as appropriate in order to promote the Licensing Objectives.

6.3 The Applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns and promote the Licensing Objectives.

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

7.1 The Licensing Sub Committee must have regard to the following:

- Eastbourne Borough Councils Statement of Licensing Policy, available at [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing)
- Statutory Guidance, as amended, under Section 182 of the Licensing Act 2003.
- Representations from the Premises Licence Holder and/or the Designated Premises Supervisor
- Representations from any Responsible Authority
- Representations from "interested parties."

7.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the 4 Licensing Objectives and may:

- Grant the application in full as requested
- Grant the application but modify it
  - by altering hours or licensable activities

- Adding conditions, or
- Omitting parts as necessary for the promotion of the Licensing Objectives.

- Reject the whole or part of the application

## **8.0 Legal Considerations**

8.1 The framework for the issue, variation and/or modification to applications made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act 2003. This guidance is provided to assist the Authority in carrying out their functions. Furthermore, the Licensing Panel must have due regard for the Eastbourne Licensing Policy Statement.

## **9.0 Human Rights**

9.1 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.

9.2 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  
Hearing and Regulations
- Eastbourne Borough Council Licensing Statement 2005
- Human Rights Act 1998