

**Body:** Licensing Sub Committee  
**Date:** 08 August 2005  
**Subject:** Application For Conversion & Variation of A Premises Licence For  
Asda Store, The Crumbles, Pevensey Bay Road,  
Eastbourne  
**Report Of:** Kareen Plympton, Licensing Manager  
**Ward(s)** Sovereign Ward  
**Purpose** To determine a variation application under the Licensing Act 2003 for an existing licensed premises  
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## **1.0 Introduction & Background**

- 1.1 An application has been received from Asda Stores Limited, Southbank, Great Wilson Street, Leeds, LS1 5AD in respect of Asda Store, The Crumbles, Pevensey Bay Road, Eastbourne.
- 1.2 The premises have traded as a public house for many years without conditions and have applied to convert their Justices On Licence under the "grandfather rights" system established by the Licensing Act 2003. This allows them to supply alcohol to a premises licence for the sale of alcohol within the previous permitted hours and restrictions as set by the Licensing Act 1964, namely:
- 0800 hours – 2300 hours Monday – Saturday  
1000 hours – 2230 hours Sunday
- 1000 hours – 1500 hours Christmas Day  
1900 hours – 2230 hours
- 0800 hours -2230 hours Good Friday
- 1.3 In respect of the application for Conversion of the premises licence, no representations have been received from Sussex Police and as such, this part of the application is deemed granted.
- 1.4 The applicant has applied at the same time for a variation of such a premises licence in this transitional period, pursuant to Schedule 8 Para 71(b) of the Licensing Act 2003. The premises application form, found in Appendix A, seeks Permission for the following licensable activity.

## **2.0 Hours of licensable activities:**

### **2.1 Sale of alcohol by retail**

- Monday	0730 hours – 2400 hours
- Tuesday - Friday	0000 hours – 2400 hours
- Saturday	0000 hours – 2300 hours
- Sunday	1000 hours – 2230 hours

### **2.2 Open to the public**

- As above

## **3.0 Consultation Process**

3.1 The Licensing Act 2003 requires applicants to advertise variations both on the premises and in a local newspaper to inform the public of the application. A number of "Responsible Authorities" are also consulted, allowing a consultation period of 28 days for representations to be made. As a result of the consultation process, representations have been received.

## **4.0 The Decision Making Process The Licensing Objectives**

4.1 In their decision making, the Licensing Committee must act to promote the four Licensing objectives. All carry equal weight as part of the process. The licensing objectives are:

- A) The prevention of crime and disorder
- B) Public safety
- C) The prevention of public nuisance
- D) The protection of children from harm

## **5.0 The Application**

5.1 When submitting an application to vary a licence under the Licensing Act 2003, the applicant is required to describe the additional steps, if any; it intends to take to promote the four Licensing Objectives. The applicants' declaration can be seen on Page 23 of the application form. Additional information has been submitted by Asda to support their application. All documentation can be found in Appendix A.

## **6.0 Eastbourne Borough Councils Statement Of Licensing Policy**

6.1 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Statement and the promotion of the 4 Licensing Objectives.

### **(A) The Prevention Of Crime and Disorder**

Eastbourne Borough Council (EBC) 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.

### **(B) Public Safety**

EBC 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.

### **(C) Prevention of Public Nuisance**

EBC 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.

### **(D) Protection of children from harm**

EBC 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 Representations** **(Appendix C)**

A full copy of all representations is included in Appendix C, however a summary appears below:

<b>Interested Parties</b>
<p>➤ Ms Kate Webster makes representations as an "interested party living in the vicinity of the premises. Representation centre on the issue of noise, nuisance, crime and disorder. Ms Webster highlights problems with "rubbish left by Asda customers, with cans and alcoholic drink bottles being the most frequent offenders." Furthermore, Ms Webster cites the "noise from people who have bought alcohol late into the night," and who will be inevitably consuming it in our residential area." She also identifies the "anti social behaviour experienced by the Kingsmere Estate, which has been improved by the efforts of the Police and Residents Association."</p>
<p>➤ Mrs Tracy Moles, Chair, Kingsmere Community Forum, makes representations in a similar capacity and identifies that "there has</p>

been a great deal of trouble in relation to anti social behaviour, to which alcohol is a significant factor." She states that the premises "has been the target for many such episodes and the prospect of alcohol being sold throughout the night cannot be considered a positive thing." " We feel that this application will cause increased nuisance to our residents and defeat our objectives."

#### **Representations from Responsible Authorities**

None

- 7.1 Discussions with all parties, including the applicants Solicitors have failed to resolve matters, hence the case being brought to Committee.
- 7.2 Regard will be had to any history or likelihood of nuisance. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.
- 7.3 In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives. Only necessary, proportionate and reasonable licensing conditions should be imposed on licence on a case by case basis. The Licensing Committee has been provided with a "Pool of Licensing Conditions," which can be attached to licences.

#### **8.0 Options Open To The Panel**

- 8.1. The Panel must have regard for the Local Authority Licensing Statement and statutory guidance in the Licensing Act 2003. Copies of Guidance under Section 182 of the Licensing Act 2003 and Eastbourne Borough Councils Licensing Statement have been provided to the Licensing Committee as reference material.
- 8.2 The Panel must take the following steps as it considers necessary for the promotion of the Licensing Objectives:-
- a) Grant the application as requested
  - b) Grant the application but modify it by altering hours or activities, adding conditions, \* or omitting parts as necessary for the promotion of the licensing objectives.
  - c) Reject the whole or part of the application

#### **9.0 Legal Considerations**

- 9.1 The Department For Culture, Media and Sport has issued Guidance under Section 182 of the Licensing 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 Statement.

#### **Human Rights**

- 9.2 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.

## **10.0 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

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