

Body: Licensing Sub Committee
Date: 22 August 2005
Subject: Application For Conversion & Variation of A Premises Licence For
The Counting House, Star Road, Eastbourne, BN21 1NB
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Upperton
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 Pleisure Limited, Premier House, 11 Marlborough Place, Brighton in respect of the Counting House, Star 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:
- 1000 hours – 2300 hours Monday – Saturday
1200 hours – 2230 hours Sunday
- 1000 hours – 1500 hours Christmas Day
1900 hours – 2230 hours
- 1200 hours -2230 hours Good Friday
- 1.2 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.
- 1.3 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 activities:-

Provision of regulated entertainment, comprising of:

- Live music (Acoustic/Live & Amplified Voice)
- Provision of recorded music – including karaoke & Jukebox
- Compere for functions & quizzes
- Pub Games in front of an audience
- Video entertainment
- Facilities for music.
- Sale of alcohol by retail

2.0 Hours of licensable activities:

2.1 Sale of alcohol by retail

- Monday – Thursday 0900 hours – 0000 hours
- Friday – Saturday 0900 – 0100 hours
- Sunday – 0900 hours – 0000 hours

Save For

- 0900 hours – 2330 hours – New Years Eve through to New Years Day
- 0900 hours – 0100 hours the following morning on Friday, Saturday, Sunday and Monday on Bank Holiday Weekends, Christmas Eve and Boxing Day.

2.4 Other licensable activities

As above save, excluding request in the event of international football and rugby events involving a UK national team.

2.5 Open to the public

- Monday – Thursday – 0900 hours – 0030 hours
- Friday – Saturday – 0900 hours – 0130 hours
- Sunday – 0900 hours – 0030 hours

Save for the non standard times listed above and 12 “event days”, when the premises will be open to the public for an additional 30 minutes.

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. Further to the receipt of representations, additional correspondence has been submitted by Mr Griffin of Pleasure Limited suggesting operating conditions. (Appendix A)

6.0 Eastbourne Borough Councils Statement Of Licensing Policy (Copies Previously Circulated As Reference Material To Committees. Can also be located at www.eastbourne.gov.uk/licensing.)

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 B)**

A full copy of all representations is included in Appendix B, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case.

Interested Parties

- Mrs H Jelly of Flat 3, Crowne House, makes representations as a person living in the vicinity and as a person involved in a local business, under Licensing objectives, the prevention of crime and disorder and prevention of public nuisance. She states that the premises "are in close proximity to Crowne House, a private retirement complex, with an average age of 80." "Residents tolerate noise in the garden and at closing time up until 11pm, but to subject them to 12.30am and 1.30am in the morning is totally unacceptable. These are vulnerable and elderly, who although they have bought a flat in the middle of two pubs, they do expect some consideration from the Local Authority. They are very tolerant and have never complained before because the noise always stops by 11.15pm."
- Mr B Robinson of 6 Selwyn Park Court, 33 Selwyn Road makes representations as a person living in the vicinity, primarily under the Prevention of Public Nuisance Licensing Objective. Observations include that as residents hear "regular loud music and general shouting" originating from this and other licensed premises. "This noise, particularly music, is loud enough to keep us awake, particularly in the summer when the windows are open." "Extended opening times would only prolong and increase adverse impact on the many local residents, through noise and behaviour."
- Mr Mark Robbins of 3A New Upperton Road, Eastbourne makes representations as a person living in the vicinity. Representations focus on the prevention of public nuisance objective. He states "I am concerned that extending licensing hours will increase the noise of customers as they are leaving."
- Mr & Mrs Bowering make representations as persons living in the vicinity of premises. Representations centre on the prevention of public nuisance objective. The premises "closes at 11pm and the noise continues unabated"

until the last customers mercifully leave the area around midnight." If the licence is granted the "noise and nuisance particularly on Friday, Saturday and Sunday will continue until two and three in the morning."

- Mr & Mrs Daniels of Moatcroft Court, Eastbourne, make representations as persons living in the vicinity. It appears that submissions relate to all four licensing Objectives. They cite "considerable noise coming from drinkers in the garden" of the premises, as well as drinkers "leaving the premises carrying glasses and bottles of beer." "These represent a danger to local motorists and residents, particularly children as these end up broken." The representation also cites associated anti social behaviour." "The noise, drunkenness, anti social behaviour, and remnants of drinkers, will seriously impinge on the quality of life of residents." "It will acutely impact on the safety of local residents, drivers and the patrons of the Counting House themselves."
- Ms ME Taylor of 16 New Upperton Road, Eastbourne makes representations as a person living in the vicinity of the premises claims that "young people, worse for drink cause noise late at night, especially weekends."
- Ms Taylor cites several incidents which she "is sure alcohol is a factor." Ms Taylor mentions to the "low key/invisible police presence" and refers to a byelaw "stipulating no noise between 11pm – 7am," which if the application is granted, "will be flouted." The correspondence ends "If permission for extended night-time opening is granted, how many nights of misery will the residents have to suffer before complaints are heeded and action taken?"
- Mr & Mrs Edgerton make representations as interested parties living in the vicinity. Representations centre on prevention of public nuisance objective. They state that the "premises is located in a primarily residential location, which is densely populated. Any additional disturbance from extending licensing hours will occur when presumably most local inhabitants will be asleep." A large number of public houses (5) are concentrated in a small area, therefore the potential for disturbance is magnified quite considerably."

Representations from Responsible Authorities

- Mr Fenton - Environmental Health – Noise.

"Given the close proximity of a large number of residential properties, I believe that noise disturbances from patrons using the beer garden are likely to occur. The application should include a condition requiring the outdoor areas to have a closing time of 2300 hours.

- 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 where it is considered necessary and appropriate.

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

*** Included as reference material for the Committee**

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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