

Body: Licensing Sub Committee
Date: 30 August 2005
Subject: Application For Conversion & Variation of A Premises Licence For
The Star, Star Road, Old Town, Eastbourne, BN21 1NB
Report Of: Karen Plympton, Licensing Manager
Ward(s) Old Town
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 Karen Weobley and Dalbir Sandhu, The Star Inn, Star Road, Eastbourne/ The Good Intent Public House, 3 John Street, Rochester.
- 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
- 2.0 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.
- 2.1 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:

Performance Of Plays – Amateur &/or Charitable Associations

Monday – Sunday 0900 hours – 0000 hours

Exhibition Of Films

Monday – Sunday 0900 – 0100 hours

Live Music – Soloists, Duos, Bands, Karaoke, Disco & Local Festivals

Monday – Sunday 0900 – 0000 hours

Recorded Music – Background, Jukebox, Radio Broadcast & Compact Discs

Monday – Sunday 0900 – 0100 hours

Performances Of Dance – All Forms

Monday – Sunday 0900 hours – 0100 hours

Anything of a similar description

Monday – Sunday 0900 hours – 0100 hours

Provision of facilities for making music – Stage, microphone & PA sound system

Monday – Sunday 0900 hours – 0000 hours

Provision of facilities for dancing in either bar

Monday – Sunday 0900 hours – 0100 hours

Late Night Refreshment – hot beverages during opening

Monday – Sunday 0900 hours – 0100 hours

2.2 Sale/Supply of alcohol by retail

Monday – Sunday 0900 hours – 0100 hours

2.3 Open to the public

Monday – Sunday – 0900 hours – 0130 hours

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. 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. (Appendix A)

5.2 Further to the receipt of representations, a mediation meeting was held at the premises in respect of the application. The applicant has offered the following conditions:

- Live music shall only be permitted until 2300 hours, save that on not more than 12 occasions in a 12 month period, including Bank Holidays, live music will be permitted until 000 hours.
- All forms of music shall be put through a noise limiter and set a level agreed with the Designated Premises Supervisor and the Head of Environmental Health.
- Notices will be prominently displayed at points of access and egress, asking patrons to leave the premises in a quiet, orderly fashion.
- Windows and doors to be kept shut at all times, save for an emergency and/or for access and egress.
- A residents meeting shall be held at the premises on the first Monday of every month between 0900 hours – 1000 hours.

5.3 Subject to the above conditions being attached to the licence, a number of representations have been withdrawn. However, some remain unresolved.

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 C, however a summary appears below. A number have been withdrawn, subject to conditions on the licence. All those making representations are entitled to attend the hearing in support of their case.

Interested Parties

- Mrs H Jelly, makes representations 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 "six yards from this public house, we tolerate and every Saturday night and sometimes Friday up until 11pm. This is acceptable. To have drinking up until 1am will cause noise, social problems, and disruptions for elderly people in the complex." She cites perceived links between the consumption of alcohol and anti social behaviour." "More hours, more drink, my residents feel intimidated by this. If the Star is allowed these extra hours, the risk of crime and disorder greatly increases." She ends, "These residents are vulnerable and we wish to protest most strongly against drinking until 1am and closing 1.30am." **However, representations will be withdrawn subject to the conditions previously outlined being attached to the licence.**
- Miss Michelle Will, makes representations as a local resident living in the vicinity of the premises. Representations centre around noise and nuisance. She states "I have seen broken glass and my car has been damaged. The noise from the Star is tolerable up until 11.00 because I know it will end at that time." ." **However, representations will be withdrawn subject to the conditions previously outlined being attached to the licence.**
- Mr & Mrs Bowering make representations as persons living in the vicinity of premises. Representations centre on the prevention of public nuisance objective. The premises is one of five public houses within 50 to 100 yards of each other, which makes our situation unique and unfortunate." "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 to one o'clock (plus thirty minutes the noise and nuisance particularly on Friday, Saturday and Sunday will continue until two and three in the morning."
- Ms ME Taylor 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."
- Ms Christine Taylor, makes representations in relation to the prevention of public nuisance objective. She states "I have no problem with their opening hours. I do hear music in my ground floor but I tolerate it as it's only at the weekends. I just know that I cannot go to bed until after a certain time. I do not relish the thought of having to stay up on possibly every night of the night. 11pm is late enough apart from the occasional special reason."

However, representations will be withdrawn subject to the conditions previously outlined being attached to the licence.

Representations from Responsible Authorities

- Mrs Hickling - Environmental Health – Noise made representation regarding the public nuisance objective. She states "Complaints have been received from neighbouring properties regarding noise from the premises." "Given the close proximity of residential premises in the area, I would request that the finishing time of live music is reduced from 0000 hours to 2300 hours.

However, representations will be withdrawn subject to the conditions previously outlined being attached to the licence

7.1 Discussions with all parties at a mediation meeting 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 are able to select conditions which can be added to any licence where it is considered necessary and appropriate for the promotion of the Licensing Objectives.

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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