

Body: Licensing Sub Committee
Date: 05 September 2005
Subject: Application For Conversion & Variation of A Premises Licence For The Lathom Hotel, 4-6 Howard Square, Eastbourne
Report Of: Karen Plympton, Licensing Manager
Ward(s) Meads
Purpose To determine a variation application under the Licensing Act 2003 for an existing licensed premises
Contact: Karen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937
E-mail address karen.plympton@Eastbourne.gov.uk

1.0 Introduction & Background

1.1 An application has been received by The Lathom Hotel, 4-6 Howard Square, Eastbourne, East Sussex.

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

1.3 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 and has been determined as such within statutory timescales.

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 activities:-

Provision of regulated entertainment, comprising of:

Live Music – Including vocal and/or instrumental, acoustic music and/or amplified music

From 1100 hours – 0100 hours, 7 days a week.

Recorded Music via any music system including DJ

From 1100 hours – 0100 hours, 7 days a week.

Anything of a similar description – including compered events, quizzes, comedians and similar events with amplified/unamplified voice

From 1100 hours – 0100 hours – 7 days a week

Provision of facilities for dancing – dancing by guests and customers

From 1100 hours – 0100 hours – 7 days a week

2.0 Supply of alcohol

On all days, to sell alcohol from 1100 hours – 0100 hours – 7 days a week. (Members of the public)

The premises wishes to retain the embedded restriction facility to supply alcohol to residents and bona fide guests 24 hours a day, 7 days a week

2.1 Open to the public

On all days, to be open to members of the public from 1100 hours – 0100 hours – 7 days a week.

The premises wish to retain the embedded restriction facility to remain open to residents and bona fide guests 24 hours a day, 7 days a week.

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. (Appendix A)

5.2 The applicants Solicitor, Jaqueline Hector of Heart Reade, Eastbourne has attempted to engage with parties making representations. The correspondence has been sent to all parties, and suggests the following conditions:

- Noise shall not be omitted from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed.
- All reasonable steps shall be taken to ensure those persons on or leaving the premises and using the adjacent car parks and highways conduct themselves in an orderly manner and do not cause annoyance to persons in the neighbourhood.
- The music played within the premises will be inaudible within 1 metre of the premises.

5.3 Several parties making representations have indicated that they would be prepared to withdraw representations, subject to the above conditions being attached to any licence.

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
<ul style="list-style-type: none">➤ Mr Frank Wolff of Eastbourne Residents Association, Park Gates, Chiswick Place, Eastbourne makes a representation as a body representing persons living in the vicinity of the premises. He makes representations under the objective of public nuisance. He states "This is a residential area;

extension of hours may disturb residents of Park Gates Flats. The Licensing Authority have asked for further information in respect of this, however nothing has been forthcoming by the time of the publication of the Committee Report.

- Mrs D Schofield of 48 Park Gates makes a representation as a local resident living in the vicinity of the premises. Representations centre on the preventing of nuisance objective.
Correspondence states that "the extension of drinking and entertainment until 1.30am is disturbing. This area is very quiet and we hear little noise after 7pm."
- Mr Peter Williams of Park Gates, Eastbourne makes a representation as a local resident living in the vicinity of the premises. Representations centre on the preventing of nuisance objective. Correspondence states "Howard Square and this part of Compton Street is a quiet residential area." "This extension, if granted, would inevitably cause disturbance in the small hours."
- Mrs Moss of Park Gates, Chiswick Place, Eastbourne makes a representation as a local resident living in the vicinity of the premises. Representations centre on the preventing of nuisance objective.
Correspondence states that "the extension of drinking and entertainment until 1.30am is unacceptable. Is it necessary in this area?"

Mrs Moss has indicated that subject to conditions previously outlined being attached to any licence, representations will be withdrawn.

- Mrs Lambrianos of Park Gates, Chiswick Place, Eastbourne makes a representation as a local resident living in the vicinity of the premises. Representations centre on the prevention of nuisance objective. She states that "the threat of late night drinking and partying does not bode well for residents. I think we also have rights that should be considered."

Mrs Lambrianos has indicated that subject to conditions previously outlined being attached to any licence, representations will be withdrawn.

- Ms Dawson, Davies, Hlland, Moss and King, all signatories of correspondence make representations as local residents living in the vicinity of the premises.
Correspondence states "we fear noise and disruptive behaviour." "Hours of sleep will be generally disturbed."

The signatories have indicated that subject to conditions previously outlined being attached to any licence, representations will be withdrawn.

Representations from Responsible Authorities

- Police – No representations
- Fire – No representations
- Health and Safety – No representations
- Planning EBC – No representations
- Area Child Protection – No representations
- Environmental Health EBC – No representations
- Trading Standards East Sussex County Council – No representations

- 7.1 Discussions with all parties, including the applicants 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