

**Body:** Licensing Sub Committee  
**Date:** 05 September 2005  
**Subject:** Application For Conversion & Variation of A Premises Licence For Mullens, 170 Seaside, Eastbourne  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)** Devonshire  
**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 by Mullens, 170 Seaside, 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  
1000 hours – 10000 hours New Years Eve – New Years Day  
as per Deregulation Order.

Plus 20 minutes drinking up

The premises also benefits from a Public Entertainment licence and Special Hours Certificate on Fridays and Saturday

1000 hours – 0000 hours plus 30 minutes drinking up

- 2.2 In respect of the application for Conversion of the premises licence, no representations have been received from Sussex Police as such, this part of the application is deemed granted and has been determined as such within statutory timescales.

- 2.3 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:**

**Films – Video Entertainment On TV Screens & Amusement Machines**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which the Police have had at least 7 days written notice and over which they have an absolute veto.

**Indoor Sporting Events – To permit pub games for an audience, whether by advertisement or spontaneously**

As above

**Live Music – Both acoustic/amplified music and amplified voice**

Monday – Wednesday	1200 hours – 0000 hours
Thursday – Saturday	1200 hours – 0130 hours
Sunday	1200 hours – 0000 hours

**Recorded Music – via jukebox or any music system, Including DJ and/or Karaoke and other audience Participation**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which the Police have had at least 7 days written notice and over which they have an absolute veto.

**Performances of dance – used for performances and competitions as well as for use by customers.**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which

the Police have had at least 7 days written notice and over which they have an absolute veto.

**Anything of a Similar Description to that falling within (e), (f) or (g)**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which the Police have had at least 7 days written notice and over which they have an absolute veto.

**Provision of facilities for making music – stage, Microphone and sound systems – amps and speakers Musical instruments**

Monday – Wednesday	1200 hours – 0000 hours
Thursday – Saturday	1200 hours – 0130 hours
Sunday	1200 hours – 0000 hours

**Provision of facilities for dancing. Permanent dance floor installed**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which the Police have had at least 7 days written notice and over Which they have an absolute veto.

**Late Night Refreshment – hot drinks, snacks and meals may be provided throughout the sale of alcohol will not be required to be ancillary to the sales of food and cold food, snacks and beverages**

Monday – Thursday	2300 hours – 0030 hours
Friday – Saturday	2300 hours – 0200 hours
Sunday	2300 hours – 0030 hours

Plus 12 Event days 0600 hours – 0230 hours, of which the Police have had at least 7 days written notice and over Which they have an absolute veto.

**2.4 Supply of alcohol**

Monday – Thursday	1000 hours – 0030 hours
Friday – Saturday	1000 hours – 0200 hours
Sunday	1000 hours – 0030 hours

Plus 12 Event days 1000 hours – 0200 hours, of which the Police have had at least 7 days written notice and over Which they have an absolute veto.

## **2.5 Open to the public**

Monday – Wednesday	0600 hours – 0100 hours
Thursday – Saturday	0600 hours – 0230 hours
Sunday	0600 hours – 0100 hours

Plus 12 Event days 1000 hours – 0230 hours, of which the Police have had at least 7 days written notice and over Which they have an absolute veto.

## **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; they intend to take to promote the four Licensing Objectives. The applicants’ declaration can be seen on Page 24 of the application form. (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](http://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**

- Ms Siobhan Bowman, of The Old Library, Firle Road, Eastbourne, makes a representation as a person living in the vicinity of the premises. Representations centre on the prevention of nuisance objective. She states "I am concerned about the level of noise that I and other residents will have to tolerate from the later hours." Concerns centre on the proposed extended hours. She states "Currently bands play on a Friday and Saturday night until 12 midnight. Almost every weekend, I am kept awake by the noise of the bands and afterwards from people leaving the premises and the bands packing up."

"The noise levels experienced from the bands is often quite substantial, The bands are so loud that I could sing along with the words!" "The problem is worse in the summer when I open the windows to cool the flat down. This increases the noise levels and often Mullens leave their doors open. "I have been informed that the premises have had soundproofing installed, but this is not obvious to me as a local resident."

"Despite noise being experienced, I have not made any objections. However they have recently started having bands on a Thursday, which caused tiredness at work the next day." "I do not think it appropriate for the premises to have live bands playing until 0130 hours, it is a residential area. Ms Bowman also states " a lack of transport will result in more noise from taxis later as people leave." "There may also be an increased likelihood of drunken behaviour as customers are leaving."

"I would like the weekend permitted hours for bands and music to stay at midnight. I would be open to suggestions of the serving time extended maybe for another half an hour and then again for drinking up time."

## **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 A mediation meeting was held between the applicants and Ms Bowman. The following was raised:
- Mr Mullen et al accept that the soundproofing of the side doors needs to be improved. Confirmed via telephone that this has been re-instated.
  - A noise assessment will be undertaken by an appropriately qualified person to identify noise sensitive areas within the premises
  - Save for access and egress, all windows and doors shall remain closed at all times
  - Ms Bowman asked if the side door could remain closed, since this was the primary source of concern.

Subsequent discussion with Fire Officer Day has revealed that certain modifications. Alterations would need to be made to the fire exit routes into the rear courtyard area. Prior to any final decision being made, further information and an inspection by the Fire Service will need to be made.

- 7.2 Discussions with all parties, including the applicants have failed to resolve matters, hence the case being brought to Committee.
- 7.3 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.
- 7.4 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. Appendix D provides the Licensing Committee 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