

Body: Licensing Sub Committee
Date: 27 September 2005
Subject: Application For Conversion & Variation of A Premises Licence For The Nuthouse, 96 Seaside Road, Eastbourne
Report Of: Karen Plympton, Licensing Manager
Ward(s)
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 The Nuthouse Public House, 96 Seaside Road, Eastbourne, East Sussex. The premises benefits from a garden for its customers to use.
- 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 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
- New Years Eve – New Years Day as per Government deregulation Order.
- 1.3 No Public Entertainment Licence (PEL) was valid at the time of the variation.
- 1.4 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.
- 2.0** 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:

Section E Live Music (indoor)

Monday – Sunday 2000 hours – 0000 hours

Section F Recorded Music (both indoor and outdoor)

Music in the garden is provided through a small outside speaker linked to the jukebox.

Monday – Thursday	1100 hours – 0100 hours
Friday & Saturday	1100 hours – 0130 hours
Sunday	1100 hours – 0000 hours

Section J Provision of facilities for dancing by patrons (indoor)

Monday – Sunday 2000 hours – 0000 hours

Section K Provision of facilities for entertainment of a similar description to that falling within (i) or (j) (indoor)

Includes Karaoke, discos and bands

Monday – Thursday	1100 hours – 0100 hours
Friday & Saturday	1100 hours – 0130 hours
Sunday	1100 hours – 0000 hours

2.1 Section M Supply of alcohol (Both indoor and outdoor)

Monday – Thursday	1100 hours – 0100 hours
Friday & Saturday	1100 hours – 0130 hours
Sunday	1100 hours – 0000 hours

2.2 Section O Open to the public

Monday – Thursday	1100 hours – 0130 hours
Friday & Saturday	1100 hours – 0200 hours
Sunday	1100 hours – 0030 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

5.0 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 25 of the application form. (Appendix A)
- 5.2 Discussions with all parties, including the applicants have failed to resolve matters, hence the case being brought to Committee.
- 5.3 Further to representations being received, the applicant has provided further evidence in respect of his application and this can be found at the rear of the application form.

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

- Mr J Jaffar of Seaside Road, Eastbourne makes a representation as a local resident living in the vicinity and also the owner of a local business in the vicinity of the premises. He makes representations under the objective of public nuisance. He states " The pub has turned in to a nightclub Friday and Saturday nights. Karaoke on a Friday night is very loud up to midnight and Saturday night is disco night, with the music played even louder, both causing a disturbance to the inhabitants in the vicinity". Under the objective of the prevention of Crime and Disorder, he states that "problems are cause by drunks leaving the premises, smashing bottles and fighting. The area is residential, home to elderly and disabled people along with families with young children. Extending the opening hours will just extend the problem".

NB. A letter has been received from Martin & Co, Property lettings and management company, offering some doubt as to whether Mr Jaffar is a person living in the vicinity. (A copy found in Appendix B)

In the light of this, it will be a matter for the committee to determine whether the representation is valid.

- Mr & Mrs Webb of Seaside Road, Eastbourne makes a representation as a local resident living in the vicinity of the premises. Representations centre on the prevention of nuisance objective.

Correspondence states that "loud music permeates through their wall into their bedroom. They believe it would be more acceptable to terminate the playing of music at 12 midnight".

- Hurst Springs Holding Limited of Wormley, Surrey makes a representation as the freeholders of The Colonnades, Colonnade Gardens, Eastbourne a large residential block within the vicinity of the premises. Representations centre on the prevention of public nuisance objective. Correspondence states "All the 100 residents have concerns relating to the noise from both the

venue itself and also when the customers leave". Under the Prevention of Crime and Disorder they are concerned that "the area will attract those looking for a fight or deal in drugs".

NB At the time of writing the report no evidence had been provided to substantiate whether Hurst Springs Holding Limited represent the views of the whole block and residents therein.

- Police – No representations
- Fire – No representations
- Health and Safety – No representations
- Planning EBC – No representations
- Area Child Protection – No representations

- Environmental Health EBC - Mr Adrian Albon from the noise pollution team made a presentation under Public Nuisance stating "The garden area could be the cause of noise nuisance and I would like to restrict the hours to those currently allowed under the Licensing Act 1964".

NB The applicants has agreed to amend their application in regard to the use of the garden to the same hours as currently permitted under the Licensing Act 1964. (Correspondence attached at the rear of the application form)

- Trading Standards East Sussex County Council – No representations

- 7.1 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.
- 7.2 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.

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