

Body: Licensing Sub Committee
Date: 19th March 2007
Subject: Application to vary a Premises Licence for Nessa's Plaice, 258 Terminus Road, Eastbourne, BN21 3DE
Report Of: Karen Plympton, Licensing Manager
Ward(s) Meads
Purpose To determine a variation under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Harry Ramsdens Limited, to vary an existing licence currently in the name of Nessa's Plaice, 258 Terminus Road.
- 1.2 The premises were purchased by Harry Ramsden Limited in December 2006 and is currently being refurbished to bring the premises up to the required standards.

2.0 Current Premises Licence

- 2.1 The premises previously traded as a fish and chip restaurant and takeaway for a number of years and has a current premises licence which permits the following:-

Recorded Music

1000 hours – 2300 hours Monday – Saturday
1200 hours – 2230 hours Sunday

Non Standard Timings

Good Friday 1200 hours – 2300 hours
Christmas Day 1200 hours – 1520 hours and 1900 hours – 2300 hours
New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 1100 hours, on 31 December to the start of permitted hours at 1000 hours 1st January.

Supply of Alcohol (both on and off the premises)

1000 hours – 2300 hours Monday – Saturday
1200 hours – 2230 hours Sunday

Non Standard Timings

Good Friday 1200 hours – 2300 hours

Christmas Day 1200 hours – 1520 hours and 1900 hours – 2300 hours

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 1100 hours, on 31 December to the start of permitted hours at 1000 hours 1st January.

Provision of Late Night Refreshment

2300 hours – 23:30 hours Monday – Sunday

Non Standard Timings

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 2300 hours, on 31 December to the start of permitted hours at 0500 hours 1st January.

2.2 Open to the public

1000 hours – 2330 hours Monday – Saturday

1000 hours – 2300 hours Sunday

Non Standard Timings

Good Friday 1200 hours – 2300 hours

Christmas Day 1200 hours – 1520 hours and 1900 hours – 2300 hours

New Years Eve – New Years Day in accordance with the Regulatory Reform (Special Occasions) Order 2002. From the end of permitted hours, 1100 hours, on 31 December to the start of permitted hours at 1000 hours 1st January.

By virtue of the converted Justices Licence, the sale of alcohol is subject to the following conditions:

1. Intoxicating liquor shall not be sold or supplied on the premises otherwise than to (a) persons taking table meals there and for consumption by such a person as an ancillary to his meal.
2. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the premises.

3.0 The Variation Application

- 3.1 An application to vary their premises licence has been sought to amend the opening hours and the hours for the sale of alcohol and to include entertainment to ensure consistency across the Harry Ramsdens estate. Further the removal of three conditions as outlined and the name of the Premises is also to be changed from Nessa's Plaice to Harry Ramsdens. The details of the variation are as follows:

Section B – Films (indoors)

10:00 hours – 23:30 hours Monday – Sunday

Section E – Live Music (indoors)

10:00 hours – 23:30 hours Monday – Sunday

Section F – Recorded Music (indoors)

10:00 hours – 23:30 hours Monday – Sunday

Section G – Performances of Dance (indoor)

10:00 hours – 23:30 hours Monday – Sunday

Section H – Anything of a similar description to E,F or G (indoors)

10:00 hours – 23:30 hours Monday – Sunday

Section I – Provision of facilities for making music (indoor)

10:00 hours – 23:30 hours Monday – Sunday

Section J – Provision of facilities for dancing (indoor)

10:00 hours – 23:30 hours Monday – Sunday

Section K – Provision of facilities for entertainment of a similar description to that falling with (I) or (J) (indoor)

10:00 hours – 23:30 hours Monday – Sunday

Section L – Late Night Refreshment (indoor)

23:00 hours – 24:00 hours Monday – Sunday

Section M - Supply of alcohol (on premises)

10:00 hours – 24:00 hours Monday – Sunday

Section O - Open to the public

0700 hours – 00:30 hours Monday – Sunday

Non Standard Timings

On New Year’s Eve from the end of permitted hours until their commencement on the morning following.

4.0 Removal of Conditions

4.1 The premises is also seeking the removal of conditions relating to the old ‘café bar conditions’ and the embedded restrictions carried over from the Licensing Act 1964.

5.0 Licensing Objectives

5.1 When submitting an application for a variation to a premises 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 19 of the application form, and within the supporting information supplied. (Appendix A)

6.0 Consultation Process

6.1 The Licensing Act 2003 requires applicants to advertise 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.

7.0 The Decision Making Process - The Licensing Objectives

7.1 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

8.0 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.)

8.1 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.

9.0 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 & Mrs Gatling of Grand Parade, Eastbourne make a representation as local residents, living in the vicinity. Their representations focus on the prevention of public nuisance licensing objective.

N.B. Following communication between the two parties this representation has been withdrawn.

- Mr Elsdon & Mrs Delaney of Terminus Road, Eastbourne make a representation as local residents living in the vicinity. Their representation focuses on the prevention of public nuisance licensing objective.

Representations from Responsible Authorities

- Environmental Health Noise – No representations
- **Police – Alan Whitehead of Sussex Police makes a representation under the crime and disorder licensing objective. His representation states that due to the high levels of alcohol related public place violent crime and disorder in the area, the police object to the removal of the café bar conditions.**

N.B This representation has now been withdrawn. The applicant has agreed to the following condition being attached to their licence `the sale of intoxicating liquor shall be by waiter/waitress service only for consumption by persons seated at tables.'

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

- 9.1 The Applicant has been in correspondence to all those who submitted a representation. This resulted in the representation from Mr & Mrs Gatling and Sussex Police, being withdrawn. For the remaining parties, Mr Elsdon and Mrs

Delaney this has failed to resolve the matter, hence the case being brought to Committee.

- 9.2 Regard will be had to any history or likelihood of nuisance at the site. Powers may be exercised to impose conditions as to hours of opening, types of licensed activity and mechanisms to promote the Licensing Objectives in order to avoid unreasonable disturbance to residents in the locality.
- 9.3 In determining what conditions should be attached to licences and certificates, if necessary, these should only be attached in order to promote the licensing objectives.
- 9.4 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.

10.0 Options Open To The Panel

- 10.1 The Panel must have regard for the Local Authority Licensing Statement and statutory guidance in the Licensing Act 2003. Copies of the revised 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.
- 10.2 The Panel must take the following steps 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

11.0 Legal Considerations

- 11.1 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.

12.0 Human Rights

- 12.1 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.

13.0 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

clm/committee report/Harry Ramsden