

Body: Licensing Sub Committee
Date: 21st October 2008
Subject: Application to vary a premises licence for Premier Extra, 28 Seaside Road, Eastbourne BN21 3PB
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Devonshire Ward
Purpose To determine a variation for a premises licence under the Licensing Act 2003.
Contact: Kareen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937
E-mail address kareen.plympton@eastbourne.gov.uk

1.0 Introduction & Background

- 1.1 An application to vary a premises licence has been received from Mr. Bernard Hall, Licensing Consultant, on behalf of Premier Extra Limited in respect of the premises known as Premier Extra, 28 Seaside Road, Eastbourne BN21 3PB.
- 1.2 The premises is an established retail stores and currently licensed for Supply of Alcohol from 8:00 to 23:00 Monday to Sunday and opening hours from 7:00 to 23:00 Monday to Sunday.

2.0 The Application

- 2.1 An application for a new premises licence has been sought for the following activities:

Section M – Supply of alcohol (Off the premises)

08:00 hours – 01:00 hours Monday - Sunday

Section O - Open to the public

07:00 hours – 01:00 hours Monday – Sunday

2.2 Licensing Objectives

When submitting an application for a new licence or a variation under the Licensing Act 2003, the applicant is required to describe the steps they intend to take to promote the four Licensing Objectives. The applicants' declaration can be seen on page 21 of the application form, included at Appendix A.

3.0 Consultation Process

- 3.1 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.

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
- 4.2 The Council's Statement of Licensing Policy provides the framework and direction of the Licensing Authority in relation to matters governed by the Licensing Act 2003. A copy of the Council's Statement of Licensing Policy is available via www.eastbourne.gov.uk/licensing or on request, from the Licensing Team Office.
- 4.3 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council Licensing Policy Statement, Section 182 Guidance issued in respect of the Licensing Act 2003, as revised, and the promotion of the 4 Licensing Objectives.

5.0 Licensing Policy Statement & The Licensing Objectives

The Prevention Of Crime and Disorder

- 5.1 Eastbourne Borough Council's 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.

Public Safety

- 5.2 The Council's 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.

Prevention of Public Nuisance

- 5.4 The Council's 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.

Protection of children from harm

- 5.5 The Council's 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.

6.0 Cumulative Impact Policy

- 6.1 The premises in question is situated within the Councils designated Cumulative Impact Policy Zone. This has been circulated separately and can be found at www.eastbourne.gov.uk/licensing.

- 6.2 Within the context of the Councils Licensing Policy Statement, Cumulative Impact is defined as:

"The potential impact on the promotion of the Licensing Objectives where there are a significant number of licensed premises concentrated in one area."

- 6.3 Furthermore, the issue of Cumulative Impact shall also be linked to:

- (a) Any material increase in the capacity of the premises;
- (b) Any change in the nature of the operation of the premises where its changes include: a change in hours, alterations to layout, inclusion and/or extension of vertical; drinking, where one of the primary activities is the consumption of alcohol and/or inclusion of various forms of regulated entertainment.

- 6.4 In its Licensing Policy Statement, the Licensing Authority states that where evidence is presented to show that a particular area had reached a point where existing activity is at such a level that the granting of additional permissions would contribute to the cumulative effect, and undermine the Licensing Objectives.

- 6.5 The effect of a Cumulative Impact Policy is to create a presumption that where representations are received, that new licences and applications to vary licences by increasing the size and timescale of operation would be refused.

- 6.6 However that policy can be re-butted by the applicant where it can be shown that the proposed change would not add to the cumulative impact being experienced.

7.0 Overview of Local Authority Visits to the Site

- 7.1 A series of inspections have been undertaken by Council Licensing Officers. The following was identified.

- 7.2 10/07/2008 Officers visited following a complaint regarding alleged underage sales. Staff member was very unhelpful and non co-operative. Unable to provide any authorisation relating to the sale of alcohol. Staff member refused

to give his name and any detail of premises licence holder. Licence not on display or available for inspection.

11/07/2008 Follow up visit. The same staff member was on duty. Unable to assist Officers, however, provided Mr. Abbas' phone number. Officer spoke to Mr. Abbas via the phone and arranged to meet Mr. Abbas at the site.

11/07/2008 Officers spoken to Mr Abbas regarding unhelpful attitude of staff, letter of authorisation regarding alcohol sales, age restricted products and absence of refusals register. Verbal advice given

18/07/2008 Officers visited following a complaint. Spoke to Mr. Abbas about alleged underage sales. He denied any underage sales. Officers checked refusal register. Last record shown as 13/07/2008

03/10/08 Officers visited with the Police to undertake a routine inspection. Mr Abbas was not on site at the start of the visit. Staff members were unable to produce the Refusals Register, and licence not on display.

After direct questioning and prompting, the staffs were able to detail the forms of identification required to verify a person's age. Mr Abbas arrived after 10 minutes. Refusals register located by him. He was unable to provide information regarding staff training. Licence lodged with the Local Authority in advance of the Licensing Hearing therefore not on site.

7.0 Representations Received

7.1 A full copy of all representations is included at Appendix B, however a summary appears below. All those making representations are entitled to attend the hearing in support of their representations.

7.2 A location map is included at Appendix C.

➤ Interested Parties – No representations.

Representations from Responsible Authorities

➤ **Police. Inspector Wainwright of Sussex Police submitted a representation primarily under the prevention of crime and disorder licensing objectives. Sergeant Julian Williams, Town Centre Officer will also attend the hearing in support of the Police 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

7.3 Regard will be had to any history or likelihood of noise, nuisance, crime and disorder at the site or in the vicinity of the site. Further, the Committee may

consider other matters that may negatively impact upon the promotion of the Licensing Objectives.

- 7.4 The Committee may exercise their powers to impose conditions, or take appropriate action as is considered appropriate in order to promote the Licensing Objectives.
- 7.5 In determining what, if any, conditions should be attached to a licence, these should only be attached where it is considered appropriate as a means to support and promote the licensing objectives.
- 7.6 Only necessary, proportionate and reasonable conditions should be imposed on a case by case basis. The Licensing Committee has previously been provided with a "Pool of Licensing Conditions," which can be attached accordingly.

8.0 Supporting Evidence – Applicant

- 8.1 Supporting evidence has been provided by the Applicant, included at Appendix D. This includes newspaper articles and photographic imagery.
- 8.2 Supporting evidence has also been provided by Sussex Police in the form of newspaper articles and witness statements. Sergeant Julian Williams will also be attending as the Town Centre Officer in support of the Police representations.

9.0 Options Open to the Panel

- 9.1 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 Council's Licensing Statement have been provided to the Licensing Sub Committee as reference material.
- 9.2 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

10.0 Legal Considerations

- 10.1 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.

11.0 Human Rights

- 11.1 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.
- 11.2 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

12.0 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