

Body: Licensing Sub Committee
Date: 28th October 2009
Subject: Application For a Premises Licence For Kings Drive Service Station, Kings Drive, Eastbourne, BN21 2QN
Report Of: Kareen Plympton, Licensing Manager
Ward(s) Ratton Ward
Purpose To determine an application for a new premises licence under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council's, Licensing Team, for the premises to be known as Esso, Kings Drive Service Station, Kings Drive, Eastbourne, BN21 2QN
- 1.2 The premises was originally an Esso garage, it was demolished and is currently being re-built. The applicant is seeking to sell alcohol from the premises which will form part of an 'On The Run' brand operated by Esso.
- 1.3 Members of the public will be able to obtain newspapers and sundries. Late night refreshment in the form of hot drinks and food will also be available for consumption on the premises. Alcohol will also be supplied for consumption off the premises if the premises licence is granted

2.0 The Application

- 2.1 An application for grant of a new premises licence under the Licensing Act 2003 has been sought for the following activities:

Section L – Late Night Refreshment (On the Premises)

2300 – 0500 hours Monday - Sunday

Section M – Supply of Alcohol (Off the Premises)

06:00 – 00:00 hours Monday – Sunday

***NOTE**

The applicants have revised the above, previously listed as 24 hours a day, 7 days a week following consultation with Sussex Police.

Section O – Open to the Public

0000 – 00.00 hours Monday - Sunday

3.0 Licensing Objectives

- 3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe any further steps; they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The applicants' declaration can be seen within Section P of the application form, the proposed operating schedule. The full application form is included at Appendix 1.
- 3.2 A layout plan of the premises and map indicating the position of "interested parties" is included at Appendix 2.

4.0 Consultation Process

- 4.1 The Licensing Act 2003 requires applicants to advertise both on the premises and in a local newspaper in order to inform the public of the application. A number of "Responsible Authorities" are also consulted as part of the process, allowing a consultation period of 28 days for representations to be made. In this instance, as a result of the consultation process, representations have been received.

5.0 The Decision Making Process

The Licensing Objectives

- 5.1 In their decision making, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight as part of the process. The licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

6.0 Eastbourne Borough Council's 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, Section 182 Guidance issued in respect of the Licensing Act 2003, as revised, and the promotion of the 4 Licensing Objectives.

The Prevention Of Crime and Disorder

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

The 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

The 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

The 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

- 7.1 A full copy of all representations is included at Appendix 3, however a summary appears below. All those making representations are entitled to attend the hearing in support of their case.

Interested Parties

- Mrs G Grinsted: a resident living in the vicinity. Her representations are based around all 4 of the licensing objectives.
- Mr N Russell and Mrs M Russell operate a business in the vicinity. Their representations are based on all 4 licensing objectives.
- Councillor Belsey makes a representation as Ward Councillor for the area and makes representations under Public Nuisance and Public Safety licensing objectives.
- Nigel Waterson, MP for Eastbourne makes representations under the prevention of crime and disorder, public nuisance and public safety licensing objectives.
- Mike Hamner on behalf of Mr and Mrs Hutchison as persons living in the vicinity of the premises. Their representations centre around prevention of crime and disorder, public safety and the protection of children from harm licensing objectives.
- H Clark's makes a representation as a person that lives in the vicinity, makes a representation based on the licensing objectives: public safety and public nuisance.
- G Clark makes a representation as a person who lives in the vicinity, based on the following licensing objectives: public safety and public nuisance.
- B Fisher makes a representation as a person living in the vicinity

of the premises, based on the following licensing objectives: public safety, public nuisance and the protection of children from harm.

Representations from Responsible Authorities

- **Sussex Police** – Following negotiations with the applicant and their representative, revisions have been made to the proposed times relating to the sale of alcohol, which will not be sold between the hours of midnight and 0600 hours. Initial representations have been withdrawn as a result.
- **Planning Department, Eastbourne Borough Council** A representation has been received from Ms Sabin, Planning Officer, regarding a planning condition. She states “The planning permission for the redevelopment of the above site was granted subject to a condition that the new building would be divided into uses of 50% A1 retail and 50% A3 café use (condition 18 of permission EB/2008/0628), in order to protect the viability of the shops in Framfield Way. The plan submitted with the premises licence would be in contravention of that condition, in that the A1 retail use predominates”
This representation has subsequently been withdrawn, since it is not considered relevant under the Licensing Act 2003. If the premises licence is granted however, the applicants will need to ensure that they have the correct planning permissions in place to operate.
- **Environmental Health and Environment Noise Team, Eastbourne Borough Council** - No representations
- **East Sussex Fire and Rescue Service** – No representations
- **Council Health and Safety Department** – No representations
- **Area Child Protection Team, East Sussex**– No representations
- **Trading Standards, East Sussex County Council** – No representations

- 7.2 Regard will be had to any likelihood of noise, nuisance, crime and disorder at the site or in the vicinity of the site. In addition, issues impacting upon public safety and strategies to protect children from harm need to be considered
- 7.3 The Sub Committee may consider other matters that may negatively impact upon the Licensing Objectives. The Committee may exercise their powers to impose conditions, or take the appropriate action as they see fit in order to promote the Licensing Objectives.
- 7.4 In determining what, if any, conditions should be attached to a licence, these should only be attached where it is considered appropriate, to support and promote the licensing objectives. Only necessary, proportionate and reasonable conditions should be imposed on a case by case basis.
- 7.5 The Licensing Committee has previously been provided with a “Pool of Licensing Conditions,” which can be attached accordingly. The Applicant and/or Responsible Authorities may also suggest conditions to address concern and promote the Licensing Objectives.

8.0 Options Open To The Sub Committee

8.1 The Sub Committee must have regard to the following:

- The Local Authority Licensing Statement
- Statutory guidance as amended under Section 182 of the Licensing Act 2003.
- Eastbourne Borough Councils Licensing Statement has been provided to the Licensing Committee as reference material.
- Representations from the Premises Licence Holder and/or the Designated Premises Supervisor
- Representations from any Responsible Authority
- Representations from "Interested Parties."

8.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:

- Grant the application in full as requested
- Grant the application but modify it:
 - by altering hours or activities
 - Adding conditions, or
 - Omit parts as necessary for the promotion of the licensing objectives.
- Reject the whole or part of the application

9.0 Legal Considerations

9.1 The framework for the issue, variation and/or modification to applications made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act 2003, as revised. This guidance is provided to assist the Authority in carrying out their functions. Furthermore, the Licensing Sub Committee must have due regard for the Eastbourne Licensing Policy Statement.

9.2 An applicant, Responsibility Authority, or "interested party," as defined by the Licensing Act 2003 has a 21 day right of appeal against the decision of a Sub Committee.

10.0 Human Rights

10.1 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.

Background Material

- Licensing Act 2003
- LACORS Guidance – Committee Hearings
- As revised, Section 182 Statutory Guidance to the Licensing Act 2003
Licensing Act 2003 Hearing and Regulations
- Eastbourne Borough Council Licensing Statement 2009 -` 2011
- Human Rights Act 1998

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