

Body: Licensing Sub Committee
Date: 9th December 2009
Subject: Application for a Variation to a Premises Licence for The Lamb, 36 High Street, Eastbourne
Report Of: Karen Plympton, Licensing Manager
Ward(s) Old Town
Purpose To determine an application for a variation to a 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 known as The Lamb, 36 High Street, Eastbourne.
- 1.2 The premises is currently a public house, which is authorised to sell alcohol both on the premises, and off the premises in sealed containers. The site also serves food on a daily basis
- 1.3 It does not currently have any outside space/garden. If granted, the applicant seeks to use the current car park as an outside area for the provision of food and drink.

2.0 The Application

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

"To permit the external area (as detailed enclosed plan) to be used as a 'trade garden' for the consumption of alcohol and for the sale of alcohol (by table service)."

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 application form is included at Appendix 1.
- 3.2 In the Operating Schedule, the applicant has detailed the additional steps he intends to take to promote licensing objective, the prevention of public nuisance. In summary, these are:
 - The outside area will be closed at 2300hrs each evening
 - Polycarbonate glassware to be used for drinks to be consumed in the designated external area.
 - Staff supervision of the external area will be in place, who will provide table service to customers

3.3 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.

4.2 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 four 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.

<p>Interested Parties</p> <ul style="list-style-type: none">➤ Dr Rhian Edwards, a local resident, makes a representation under the public nuisance licensing objective.➤ Mr S Hurst, a local resident, makes a representation under the public nuisance licensing objective.➤ Mr G Downey, a local resident, makes a representation under the public nuisance licensing objective.➤ Mr R Noble, a local resident, makes a representation under the public nuisance licensing objective.➤ A petition was also received which was put together by Mr S Hurst, a local resident. The petition had 35 signatures and subsequently, two people have withdrawn their representations. Of the current 33 signatures, 3 are those of Mr Hurst, Mr Noble and Mr Downey, who have also made separate representations.
<p>Representations from Responsible Authorities</p> <ul style="list-style-type: none">➤ Sussex Police – No representations➤ Eastbourne Borough Council Environmental Health Department Noise Team - No representations➤ East Sussex Fire and Rescue – No representations➤ Eastbourne Borough Council Health and Safety Department – No representations➤ Eastbourne Borough Planning Department– No representations➤ Local Children Safeguarding Board– No representations➤ Trading Standards East Sussex County Council – No representations

7.2 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. 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 Statement of Licensing Policy.
 - 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. 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 Policy Statement.

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
- Section 182 Statutory guidance to the Licensing Act 2003
Hearing and Regulations
- Eastbourne Borough Council Licensing Statement 2005
- Human Rights Act 1998

The Lamb/Committee report