


Crawley Borough Council

	Report No: ES/210	
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Report to Licensing Sub Committee

Application for the Grant of New Premise Licence for 38 – 40 High Street

Angela Tanner – Head of Environmental Services

1.	Details of Application	Reference Documents and Guidance
1.1	On the 10 th February 2009, Mr Tobiano and Angelo Mancuso submitted an application to the Council for the grant of a premises licence in accordance with the provisions of the Licensing Act 2003, 'the Act'.	Appendix A Application Form
1.2	The application is for the supply of alcohol and regulated entertainment in accordance with the attached operating schedule.	Appendix A Application Form
1.3	The applicant is intending to promote the four 'licensing objectives' with the steps he proposes to take in the submitted 'operating schedule' (included in the attached application form).	Appendix A Application Form Operating Schedule Section P
1.4	The applicant proposes to run a 'relaxed stylish café bar in the High Street as a lunch time and evening venue with comfortable seating with waiter/waitress service of food when it is served. Tea and coffee will be available throughout the day and night as well as alcohol and soft drinks. Light snacks will be served up until evening but no later than 23.00hrs'.	Appendix A Application Form Operating Schedule Section P(a)
1.5	The proposed 'Hours Open to the Public' are as follows:- Monday to Sunday 11.30 – 01.00 (With additional hours on specified occasions as indicated)	Appendix A Application Form Operating Schedule Section O
1.6	Location of premises	Appendix B
1.7	Proposed 'lay - out' of premises	Appendix C

2 Consultation

- 2.1 The application was advertised in accordance with legislation and as a result of the consultation process the following were submitted to the Council:-

Responsible Authorities

Planning	- no objection
Building Control	- no objection
Environmental Health	- no comment
Trading Standards	- no comment
Fire & Rescue	- no comment
Child Protection	- no comment
Sussex Police	- No objection (conditions agreed)

Interested Parties

3 representations made against

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| 2.2 | Sussex Police as a 'responsible authority' has conducted negotiations with the applicant which has resulted in agreed conditions to be attached to the licence (if granted). | <i>Appendix D
Copy of conditions agreed
with Sussex Police.</i> |
| 2.3 | Ms Trudy Furini, Manager of the Ja Ja Bar submitted a representation concerning the 'Prevention of Crime & Disorder' objective. | <i>Appendix E</i> |
| 2.4 | Poppleston Allen Solicitors submitted a representation on behalf of Luminar Leisure the owners and operators of Liquid Envy based on the 'Prevention of Crime & Disorder' objective. | <i>Appendix F</i> |
| 2.5 | Daniel Booth, a local resident, has submitted a representation with reference to three of the Licensing Objectives:-
'The prevention of Crime & Disorder',
'Public Nuisance' and the 'Protection of Children'. | <i>Appendix G</i> |

3 Background

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| 3.1 | Pursuant to the Licensing Act 2003 and regulations, an application for a premises licence must be made to the relevant licensing authority and be accompanied by an operating schedule, a plan of the premises to which the application relates in the prescribed form, and, if the licensable activities include the supply of alcohol, by a form of consent given by the individual whom the applicant wishes to be specified in the premises licence as the premises supervisor. | <i>Licensing Act 2003, 'the Act'
Section 17</i> |
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- 3.2 Where the Licensing Authority receives an application for a premises licence in accordance with legislation they must grant the licence subject only to such conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions. *Licensing Act 2003, 'the Act' Section 18*
- 3.3 Where relevant representations are made the licensing authority must hold a hearing to consider them, and, having regard to the representations, take such of the steps (if any) as it considers necessary for the promotion of the licensing objectives.
- 3.4 The steps so mentioned are:-
- (a) To grant the licence subject to the conditions mentioned in the 'operating schedule', modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and any mandatory condition.
 - (b) To exclude from the scope of the licence any of the licensable activities to which the application relates
 - (c) To refuse to specify a person in the licence as the designated supervisor,
 - (d) To reject the application.

4 Staffing, Financial and Legal Implications

- 4.1 There are no extra staffing or financial implications to the Council, save for those laid out in Part 10 of the Information Pack in respect of possible appeals. *Information Pack: Part 10 (General)*
- 4.2 The Council is required to consider the impact any decision may have on an individual's Human Rights. *Information Pack: Part 10 (General)*
- 4.3 The Council is required to consider the impact any decision may have on crime and disorder in the area. (Section 17, Crime and Disorder Act, 1998).

5 Community Strategy and Corporate Plan

- 5.1 See part 10 (General); Information pack *Information Pack: Part 10*

6 Considerations to be Addressed in Accordance with Licensing Guidance issued under section 182 of the Licensing Act 2003

6.1	Members must give due consideration to the merits of each individual case. Attention is drawn to the following sections of the 'Members' Information Pack':	
	Council's Licensing Policy,	<i>Part 1</i>
	LACORS Guidance,	<i>Part 2</i>
	CBC Hearing Procedures,	<i>Part 2</i>
	Premises Guidance,	<i>Part 3</i>
	Licensing Act (premises),	<i>Part 3</i>
	Regulations (premises),	<i>Part 3</i>
	Conditions (premises)	<i>Part 8 & 9</i>
6.2	The aim of the policy is to promote the licensing objectives set out in the Act whilst securing the safety and amenity of residential communities and facilitating a sustainable entertainment and cultural industry.	<i>CBC Alcohol Licensing Policy 1.2</i>
6.2.1	The overriding philosophy of the licensing regime is that there is a presumption that a licence will be granted unless there are compelling reasons to refuse the licence.	<i>CBC Alcohol Licensing Policy 1.2</i>
6.2.2	The Licensing Authority will primarily focus on the direct impact the activities taking place at licensed premises will have on members of the public living, working and engaging in normal activity in the area concerned. Licensing law is not a mechanism for the general control of anti social behaviour by individuals once they are beyond the reasonable control of the licence holder.	<i>CBC Alcohol Licensing Policy 2.4</i>
6.2.3	The policy is also intended to ensure that the provision of additional opportunities for licensable activities is matched by additional measures enabling the police and responsible authorities to act promptly to maintain public order and safety.	<i>CBC Alcohol Licensing Policy 2.7</i>
6.2.4	The key controls in respect of preventing crime and disorder arise from good operational planning and good management of activities at the premises.	<i>CBC Alcohol Licensing Policy 2.10</i>
6.2.5	The Licensing Authority recognise that the public safety objective is concerned with the physical safety of the people using the relevant premises and not public health which is dealt with in other legislation.	<i>CBC Alcohol Licensing Policy 2.27</i>
6.2.6	There is no statutory definition of Public Nuisance. The Licensing Authority will therefore need to make judgements about what constitutes public nuisance and define the necessary controls. To decide this, Members will focus on whether the likely impact of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity are disproportionate and unreasonable.	<i>CBC Alcohol Licensing Policy 2.33</i>
6.2.7	The Licensing Authority recognises that the protection of children from harm includes the protection of children from moral, psychological and physical harm and this would include the protection of children from too early an exposure to strong language and sexual expletives.	<i>CBC Alcohol Licensing Policy 2.46</i>

6.3 **Please note:**

*Appendix A
(Application Form -Part B)
'Operating Schedule'*

Applicants are expected to conduct a thorough risk assessment with regards to the licensing objectives when preparing their applications. Any risk assessment to identify necessary measures should consider the individual circumstances of the premises (including local knowledge) and take into account a range of factors including:

- . • the nature and style of the venue;
- . • the activities being conducted there;
- . • the location; and
- . • the anticipated clientele

6.4 In preparing 'Operating Schedules', the Licensing Authority expects that applicants should have regard to statements of licensing policy published by this authority for the Crawley area.

CBC Alcohol Licensing Policy

6.4.1 It is also expected that applicants will seek the views of key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority safety officers and local community groups might be consulted.

CBC Alcohol Licensing Policy

6.5 Examples of conditions which may assist in the promotion of the licensing objectives can be found in the information pack.

*Information Pack:
Part 1, Policy
Part 9, conditions*

6.6 Members will need to incorporate the provisions of the operating schedule into any licence granted by imposing on the licence the provisions of the operating schedule as conditions provided that, if Members believe that it is necessary to modify the provisions of the operating schedule in order to ensure that the licensing objectives are promoted, appropriate modifications or alternative conditions may be drafted and imposed.

6.7 If Members believe that the operating schedule fails to promote the licensing objectives in some way, conditions not covered by the provisions of the operating schedule may be drafted and inserted. Members may also exclude elements of the operating schedule which do not promote the licensing objectives by the imposition of negative conditions or conditions otherwise appropriately drafted.

6.8 Council Policy states that conditions will be used if they can control issues that directly impact on the behaviour of those under the licensee's direction, when on his premises or in the immediate vicinity of the premises as they seek entry or leave. The Conditions laid down in Annex D of the Statutory Guidance will be used as a pool of conditions in respect of General Management Controls on Crime and Disorder.

*CBC Alcohol Licensing Policy
2.14*

- 6.9 The Licensing Authority will look to the Police as the main source of advice on matters relating to the reduction of crime and disorder objective and this advice will be given considerable weight. *CBC Alcohol Licensing Policy 2.14*
- 6.10 Members are reminded, however, that if conditions which do not precisely mirror the operating schedule are to be imposed, the Members must satisfy themselves that appropriate evidence exists to justify the imposition of these conditions.
- 6.11 Section 4 of the 2003 Act provides that in carrying out its functions, a licensing authority must 'have regard to' the licensing statement in section 5 of the Act and guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.
- 6.12 However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.
- 6.13 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 6.14 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. *Section 182 Statutory Guidance 1.15*
- 6.15 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate such as the requirement for door supervisors, CCTV etc *Section 182 Statutory Guidance 1.27*
- 6.15.1 **Door supervisors** *Section 182 Statutory Guidance Annex D*
- Conditions relating to the provision of door supervisors and security teams may be valuable in:
- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
 - keeping out individuals excluded by court bans or by the licence holder;
 - searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
 - maintaining orderly queuing outside venues.

Where the presence of door supervisors conducting security activities is to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority, conditions may also need to deal with:

- the number of supervisors;
- the displaying of name badges;
- the carrying of proof of registration;
- where, and at what times, they should be stationed on the premises; and
- whether at least one female supervisor should be available (for example, if female customers are to be given body searches).

Door supervisors also have a role to play in ensuring public safety

6.15.2 **CCTV**

*Section 182 Statutory
Guidance
Annex D*

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

- 6.16 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.

*Section 182 Statutory
Guidance
1.28*

- 6.17 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area

*Section 182 Statutory
Guidance
1.29*

- 6.18 The Government's expectation is that the police will have a key role in undertaking the following tasks:

*Statutory Guidance
S182
2.2*

In relation to premises providing late night refreshment; working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and antisocial behaviour.

- 6.19 The essential purpose of the licence in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives

*Statutory Guidance
S182
2.4*

- 6.20 Conditions relating to the crime and disorder objective are best targeted to prevent crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally.

*Section 182 Statutory
Guidance
2.6*

- 6.21 Similarly, the provision of requirements for door supervision may be

*Section 182 Statutory
Guidance*

necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed.

2.7

- 6.22 In preparing an operating schedule, the Secretary of State expects applicants to have had regard to the statement of licensing policy for their area. They should also be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives.
- 6.23 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises
- 6.24 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - the statutory guidance;
 - its own statement of licensing policy.
- 6.25 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs should carry out before making their application for a premises licence.
- 6.26 Conditions which relate to the four licensing objectives could be used where necessary and appropriate to the particular circumstances of an individually licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.
- 6.27 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.

Section 182 Statutory Guidance
8.28

Section 182 Statutory Guidance
8.31

Section 182 Statutory Guidance
9.25

Section 182 Statutory Guidance
10.7

Section 182 Statutory Guidance
10.5

Section 182 Statutory Guidance
10.13

6.28 Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.

*Section 182 Statutory Guidance
10.14*

6.29 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

*Section 182 Statutory Guidance
10.20*

6.30 If members consider a door supervisory presence to be necessary the following will apply:-

Mandatory conditions will apply to this application;

Section 21; **Door Supervisors**

“(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

7 Recommendations

7.1 Having regard to the representations Members may take such of the following steps mentioned (if any) as it considers necessary for the promotion of the licensing objectives;-

7.2 Grant the application subject to:

(a) conditions which are consistent with the operating schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives (and in this respect members should note that since the submission of the application the applicant has agreed with Sussex Police to an amended operating schedule which includes additional conditions to promote to the prevention of crime and disorder objective and this is at Appendix D); and

(b) any relevant mandatory conditions or,

7.3 Exclude from the scope of the licence any of the licensable activities to which the application relates, or,

7.4 To refuse to specify a person in the licence as the premises supervisor or,

*Appendix A
(Application Form -Part B)
'Operating Schedule'
Section 18(2)
Appendix D*

*Appendix A
(Application Form -Part B)
'Operating Schedule'
Section 18(4)(b)*

7.5 Reject the application, giving reasons for doing so.

Section 18(4)(d)

8. Background Papers

All associated paper work regarding this application.

The information pack

Statutory Guidance

Statement of Policy

Contact officer Mike Lyons

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