

LICENSING PANEL

(Licensing Act 2003 Functions)

Agenda Item 65

Brighton & Hove City Council

Subject:	Application for a Variation of a Premises Licence under the Licensing Act 2003 for Koba Bar, 135 Western Road, Brighton, BN1 2LA		
Applicant (s):	Kempston Leisure Limited		
Date of Meeting	7th October 2009		
Report of:	Assistant Director Public Safety		
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Wards Affected:	Regency		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Koba Bar.

2. RECOMMENDATIONS:

- 2.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Koba Bar.

2.2.1 The application is for:

A Variation of a Premises Licence under the Licensing Act 2003.

The application proposes:

To incorporate the ground and basement floor of what was Oddbins into the premises creating a new entrance with mainly Cafe' Bar service to the new area but with the hours and regulated entertainment permitted currently in koba extended to the Basement area on occasions. There are also some minor alterations to the upper floors as shown on the plans.

- 2.2.2 Part P of the application is detailed at Appendix A and the proposed plan of the premises is attached at Appendix B.

2.3 Summary table of existing and proposed activities -

	<i>Existing</i>	<i>Proposed</i>
E Live music	<p>Indoors. Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00 Live music is played on average about three times a week with maybe one or two musicians in the upper rear only and then only for short periods.</p>	<p>Indoors No change in hours but to extend to the whole of the premises Live music is played on average about three times a week with maybe a one or two musicians in the upper rear area only and then only for short periods</p>
F Recorded Music	<p>Indoors. Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00 Recorded music is only played through the in-house systems under strict control and governed by previously agreed levels in conjunction with EHO</p>	<p>Indoors No change in hours but to extend to the whole of the premises Recorded music is only played through the in-house systems under strict control and governed by previously agreed levels in conjunction with EHO</p>

<p>G Performance of Dance</p>	<p>Indoors Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00</p> <p>Performance of dance is a possibility if arranged in conjunction with other entertainment in the first and upper floors. If so it would be for short periods. It is not a feature of running of the premises.</p>	<p>Indoors No change in hours but to extend to the whole of the premises</p> <p>Performance of dance is a possibility if arranged in conjunction with other entertainment in the first & upper floors, if so it would be for short periods. It is not a feature of the running of the premises.</p>
<p>H Anything of a similar description within e, f ,or g</p>	<p>Indoors. Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00</p> <p>These activities if taking place at all would be of a limited nature and would still use the in house amplification systems ensuring noise levels were controlled. Recorded music could be supplemented by a DJ of Karaoke or Cabaret including the performance of dance, it is not however a feature of the way this premise operates and would normally be restricted to the first and upper rear floors.</p>	<p>Indoors No change in hours but to extend to the whole of the premises</p> <p>These activities if taking place at all would be of a limited nature and would still use the in house amplification systems ensuring noise levels were controlled.</p>

<p>I Provision of facilities for making music</p>	<p>Indoors. Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00</p> <p>An in house amplification system with usual music reproduction facilities is installed on each floor and under strict control of management with sound levels set to ensure no noise problems to nearby properties.</p>	<p>Indoors No change in hours but to extend to the whole of the premises</p> <p>Koba opened in 2001 at which time sound levels were set and have been maintained since without complaint.</p>
<p>J Provision of facilities for dancing</p>	<p>Indoors Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00</p> <p>Dancing is always possible when music plays but is not a major feature of these premises. There are small dance areas on the first floor rear and upper floors of the premises.</p>	<p>Indoors No change in hours but to extend to the whole of the premises</p> <p>There are small dance areas on the first floor rear and upper floors of the premises. Dancing is always possible when music plays but is not a major feature of the premises.</p>
<p>L Late Night Refreshment</p>	<p>Indoors Light refreshments including hot drinks such as tea and coffee are available at all times. Every Day 23:00 – 05:00</p>	<p>Indoors No change in hours but to extend to the whole of the premises</p> <p>Light refreshments including hot drinks such as tea and coffee are available at all times.</p>

M Supply of Alcohol	On the Premises and Off the Premises Mon – Thurs: 10.00 – 05.00 the following morning Friday 10.00 right through to Monday at 05.00 On New years day to continue from 05.00 to 10.00	On the Premises and Off the Premises No change in hours but to extend to the whole of the premises
O Hours premises are open to public	Monday – Thursday 10:00-05:00 the following morning. Friday 10.00 right through until Monday morning at 05.00 hours Non-standard timings: On New years day to continue from 05.00 to 10.00	No change in hours but to extend to the whole of the premises

2.4 Existing licence attached at Appendix C.

3. **RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

3.1 Special Stress Area: The premises falls within one of the Special Stress Areas. These areas are deemed areas of special concern in terms of the levels of crime, disorder, and public nuisance experienced within them. (See Prevention of Crime and Disorder 2.4.10 – 2.4.14 and Appendices D and E).

3.2.1 **Representations received**

Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.2.2 Eight representations were received. They were received from local residents, Sussex Police and the Environmental Protection team.

3.2.3 Representations received had concerns relating to Prevention of Crime and Disorder, Prevention of Public Nuisance, Protection of Children from Harm.

3.2.5 Full details of the representations are attached at Appendix F. A map detailing the addresses of the persons who have submitted the representations and their location in relation to the premises is attached at Appendix G. (Please note Relevant Authorities are not included).

4. CONSULTATION:

Commentary on licensing policy

- 4.1 The following extracts from Brighton & Hove Licensing Policy are considered relevant to this application and numbered as they appear in the policy:

General

- 1.2 The licensing objectives are:-
- (a) Prevention of crime and disorder;
 - (b) Public safety;
 - (c) Prevention of public nuisance;
 - (d) Protection of children from harm.
- 1.3 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focussed on matters which are in the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.
- 1.5 Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.
- 1.15 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the Act, and the conditions attached to licences, certificates and permissions will be focused on matters which are within the control of the licensee and will centre on the premises themselves and their immediate vicinity. When considering these terms and conditions the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

In respect of the prevention of crime and disorder

- 2.2 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority recommends that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door staff so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection.
- 2.3 It is expected that the designated premises supervisor (DPS) will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises.
- 2.4.10 Special Stress Areas – **Appendix D** of the SoLP details two areas of the Brighton city centre which border the Cumulative Impact area and which are deemed areas of special concern in terms of the levels of crime and disorder and public nuisance experienced within them.
- 2.4.11 While it is not considered appropriate at this stage to include these areas within the main impact area as such, these Special Stress Areas (SSAs) are of concern to the licensing authority because of the relatively high levels of crime and disorder and nuisance experienced.
- 2.4.12 New and varied applications for premises and club premises certificates within SSAs will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas. **Appendix E** of the SoLP sets out a list of potential measures the licensing authority considers may be appropriate. These may be more or less appropriate depending upon the style of operation applied for.
- 2.4.13 On receipt of any application in SSAs, where a relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules and compare them to the measures set out in **Appendix E**. Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures.

2.4.14 The Licensing Authority will keep the Cumulative Impact Area and Special Stress Areas under review. Should the authority find that problems of crime and disorder or nuisance are not improving, or are worsening; the Special Policy will be reviewed with a view to bringing the SSAs into the Cumulative Impact Area. If it is found that the above problems are receding the Special Policy may be reviewed with a view to revising the areas' boundaries.

2.5.1 Diversity of premises

This attempts to ensure that there is a mix of the different types of licensed premises, particularly in areas where there is a high density of such premises. It will provide resilience against changing trends and attract a more diverse range of customers from different age groups, different communities of interest and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This in turn may have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time, may create opportunities for violent crime and public disorder and therefore encourages mixed use venues, varying hours of business and a wider age balance.

2.5.2 Café Bars

The licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter /waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times.

Licensees should be aware that breach of these conditions is likely to lead to proceedings for revocation of the licence.

2.5.4 Geographical spread

Spreading the siting of large venues (those with a capacity in excess of 250 people) across the city reduces the problems of dispersing large numbers of people leaving premises in close proximity at the same time. Taxi and bus queues can be flash points for public disorder and violence. A good geographical spread coupled with increased taxi ranks and bus stops near

venues reduces waiting time and the potential for crime and disorder.

2.5.5 Care, control and supervision of premises

The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The Police will consider the applicants, objecting to the application where appropriate. The Police will suggest crime prevention measures in relation to, for example, the internal layout of the premises, close circuit television, help points, lighting and security staff. The Police may ask for conditions which support such measures to be imposed when planning or licensing applications are granted, e.g. type of licence, capacity, opening time restrictions.

2.7 High volume vertical drinking establishments (HVVD's) may, where necessary and appropriate, have conditions attached relating to: a prescribed capacity, the ratio of chairs and tables to be provided for customers based on capacity and the presence of SIA registered security teams.

2.8 Enforcement issues will be considered in the light of any relevant enforcement policies and close links will be sought between all enforcing authorities, e.g. through the use of intelligence sharing and strategy groups. Such protocols may lead to the targeting of agreed high risk and problem premises whilst permitting a lighter touch approach in respect of well run premises.

In respect of the prevention of public nuisance

4.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, or as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke)

4.3 Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence.

- 4.4 Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises.
- 4.5 Staggered closing times will not be used to combat binge drinking disorder and antisocial behaviour. Zoning will be avoided. A general principle of later opening so that customers can leave for natural reasons, slowly over longer periods will be promoted, to prevent unnatural concentrations of people. The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 4.8 Regard will be had to any history or likelihood of nuisance. Generally, favourable consideration will be given to applications for later hours in the city centre and on busy main roads. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.

In respect of the protection of children from harm

- 5.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, the committee recommend that all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the licensing strategy group.
- 5.2 It is the committee's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them.
- 5.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:-
- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking;
 - with a known association with drug taking or dealing;

- where there is a strong element of gambling on the premises;
- where entertainment of an adult or sexual nature is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons

Options may include:-

- limitations on the hours when children may be present;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for an accompanying adult;
- full exclusion of people under 18.

5.6 Where children are expected to attend a public entertainment, appropriate adult supervision will be required to control the access and egress of children and to protect them from harm. This will normally be an adult member of staff for every 100 children. Where the entertainment is music and dancing, 2 persons, licensed by the Security Industry Authority (door supervisors) should be employed for every 100 children. Nothing in this policy shall seek to override child supervision requirements contained in other legislation or regulations. The licensing authority recognises the Children, Families and Schools section as being competent to advise on matters relating to the protection of children from harm.

Strategic Integration

- 6.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening.
- 6.7 This policy avoids duplication with other regulatory regimes wherever possible.

In respect of Live music, Dancing and Theatre

- 7.1 This policy recognises the need to encourage live music, dancing and theatre for the wider cultural benefits of the community generally. In addressing such issues the potential for limited disturbance in neighbourhoods will always be carefully balanced with these wider benefits, particularly for children. The impact of licensing on regulated entertainment, particularly live music and dancing, will be monitored. Where indications are that such events are being deterred by licensing requirements, the policy will be revisited with a view to investigating how such situations might be reversed.
- 7.2 The Licensing Committee represents the general interests of a community. In determining what conditions should be attached to licences and certificates as a matter of necessity for the

promotion of the licensing objectives. The Licensing authority is aware of the need to avoid measures which deter live music, dancing and theatre - such as imposing indirect costs out of proportion to the income of the licence holder and to the risks presented. Only necessary, proportionate and reasonable licensing conditions should impose any restrictions on such events.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted: Karen Brookshaw Date: 17.09.2009

5.2 Legal Implications:

The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

Lawyer Consulted: Rebecca Sidell Date: 17.09.2009

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

5.4 Sustainability Implications:

Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

5.5 Crime & Disorder Implications:

Licensing policy aims to prevent crime and disorder and protect public safety.

5.6 Risk and Opportunity Management Implications:

Licensing is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Part P of application
2. Appendix B – Proposed Plan of Premises
3. Appendix C – Part A of Premises Licence
4. Appendix D – Brighton and Hove City Council – Special Stress areas
5. Appendix E – Measures to be considered in SSA's
6. Appendix F – Representations
7. Appendix G – Map of area

Documents in Members' Rooms

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council: Statement of Licensing Policy

Background Documents

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council Statement on Licensing Policy.

