

## Rother District Council

**Report to:** General Licensing Panel

**Date:** 13 November 2020

**Title:** Application for the review of a Premises Licence –  
The Devonshire Bar and Lounge, Devonshire Square,  
Bexhill-on-Sea, East Sussex, TN40 1AB  
WK202008380

**Report of:** Head of Service Environmental Services, Licensing and  
Community Safety

**Ward(s):** Central, Bexhill-on-Sea

**Purpose of Report:** To determine the Review application made under Section  
51 of the Licensing Act 2003 for The Devonshire Bar and  
Lounge, Devonshire Square, Bexhill-on-Sea, East  
Sussex, TN40 1AB

**Officer  
Recommendation(s):** It be **RESOLVED:** That the Review application made  
under Section 51 of the Licensing Act 2003, be  
determined.

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### 1. Introduction

An application has been made by Sussex Police for a Review of the Premises Licence.

The application relates to the failure to uphold the 'prevention of crime and disorder' and 'public safety' licensing objectives.

The proceedings set out in the 2003 Act for 'reviewing' premises licences represent a key protection for the community where alleged problems associated with the licensing objectives occur after the grant of a premises licence.

#### 1.1 Applicant Details:

**Name:** Sussex Police.

**Address:** Bexhill Police Station, Terminus Road, Bexhill-on-Sea, East Sussex  
TN39 3NR.

#### 1.2 The Premises:

Details of the premises are as follows:-

The Devonshire Bar and Lounge, Devonshire Square, Bexhill-on-Sea, East  
Sussex, TN40 1AB.

**Location:**

The premises is situated on the corner of Devonshire Road and Devonshire Square in the town centre. There are residential properties above the premises.

(Please see the location plan and photographs in Appendices A and B).

**Description:**

A town centre licensed premises with late hours.

**Existing Licence:**

Premises licence number 05/02065/LAPRE

The Premises Licence (correct at time the review application was received) is reproduced in Appendix H, licence plan Appendix I.

The premises has the benefit of a Premises Licence which authorises the sale/supply of alcohol (on and off sales), regulated entertainment and late-night refreshment.

The Premises Licence Holder is 'F. Forte Developments Ltd', 23 St Leonards Road, Bexhill, East Sussex, TN40 1HH.

The Designated Premises Supervisor (DPS) is Mr Sokol Kapllani (*see update below*).

(F. Forte Developments Ltd. - the directors listed on 20/10/2020 are Francesco Forte, Gino Forte).

**Post review application update:**

On 19/10/2020, Mr Gino Forte emailed the Council with the following message:  
*"With immediate effect I can confirm that THE DEVONSHIRE BAR AND LOUNGE has been forced to cease trading by F. FORTE DEVELOPMENTS LTD.*

*We also give notice of immediate removal of SOKOL KAPLLANI as the designated premises supervisor.*

*The premises will remain closed until further notice."*

An application has been submitted to remove Mr S Kapllani as the DPS. Without a designated premises supervisor, the premises cannot sell alcohol.

Mr Gino Forte has also indicated that the premises will undergo a refurbishment. Please see Appendix J for an update dated 23/10/2020 from Mr Forte's legal advisor.

For the avoidance of doubt, the premises licence has not been surrendered.

[*Post review application update 26/10/20: the premises licence holder has formally removed Mr S Kapllani from the premises licence and he is no longer the DPS. Without a DPS, the premises cannot sell alcohol*].

## **Licensing history:**

The premises licence was granted in November 2005 following a General Licensing Panel hearing.

An application to vary the premises licence was granted in May 2008 following a General Licensing Panel hearing; additional conditions were added.

An application to vary the premises licence was granted in November 2008 following a General Licensing Panel hearing; additional conditions were added.

F. Forte Developments Ltd first held the premises licence in September 2011.

The premises licence was varied in January 2016 to add Mr S Kapllani as the DPS.

[*Post review application update 26/10/20: the premises licence holder has formally removed Mr S Kapllani from the premises licence and he is no longer the DPS. Without a DPS, the premises cannot sell alcohol*].

## **2. The application for Review**

On the 23 September 2020, Sussex Police made an application (under Section 51 Licensing Act 2003) for a Review of the Premises Licence on the grounds that the 'prevention of crime & disorder' and 'public safety' licensing objectives are not being met.

The application is reproduced in Appendix C, with evidence exhibits in Appendices D to D15. In summary, the grounds for Review are the "*continued disorder, assaults and ongoing drug use within the premises*".

Sussex Police licensing team has stated that they have conducted a stepped approach over the past few years and on several occasions they have raised concerns around the management of the premises to both the DPS and also the Premises Licence Holder, Gino Forte. This approach has not resulted in any sustained improvements in the levels of drug use at the premises. Following several recent incidents of assaults, Sussex Police has determined that there is no other proportionate course of action other than a review of the premises licence.

Sussex Police contend that the problems seen at this premises cannot be allowed to continue any longer and that public safety is continually being put at risk by those that operate the premises.

Sussex Police state that due to the high number of incidents documented, together with the persistent evidence of high drug use within the premises and a failure of the premises management to bring about improvements over several years, Sussex Police invite the General Licensing Panel to seriously consider taking the following measures (i) to (iv) listed below.

Sussex Police contend this is appropriate, necessary and proportionate and will help ensure that the licensing objectives are promoted, and the public are kept safe.

### **(i): Removal of the Designated Premises Supervisor (DPS)**

Sussex Police have no confidence in the ability of the DPS to promote the licensing objectives. Sussex Police therefore request that Mr. Sokol KAPPLANI is removed as the DPS, with a replacement being subject to Sussex Police approval. It is believed that this is an essential measure to halt the undermining of the licensing objectives and to re-establish effective day-to-day control of the premises, especially at key times of operation.

[Post review application update 26/10/20: the premises licence holder has formally removed Mr S Kapllani from the premises licence and he is no longer the DPS. Without a DPS, the premises cannot sell alcohol].

### **(ii): Suspension of the Premises Licence**

Sussex Police request that the premises licence is suspended for a period of no less than eight weeks. They state that this is in order to break the cycle from the current management and to implement changes that would be brought about by the requested conditions, the change in DPS and the subsequent implementation of new policies and procedures. A period of suspension would also send a strong deterrent to the owner of this premises and to other Premises Licence Holders in the area that the undermining of licensing objectives will not be tolerated by the Licensing Authority.

### **(iii): Reduction of late-night authorised hours for licensable activities**

Sussex Police state that they have provided evidence which highlights increased incidents regarding crime and disorder after 23:00hrs, particularly on Friday, Saturday and Sunday evenings. Sussex Police state that closing earlier will help reduce intoxication levels and in turn reduce the number of incidents attributable to the premises. Sussex Police recommended reduced hours (*in bold*) as below:

Current authorised hours	<b>REDUCED HOURS</b>
<b>Retail sale of alcohol</b>	
Monday – Thursday 10:00 – 00:00*	<b>10:00-23:00hrs*</b>
Friday – Saturday 10:00 - 02:00*	<b>10:00-00:00hrs*</b>
Sunday 10:00 – 00:00*	<b>10:00-23:00hrs*</b>
<b>Performance of live music</b>	
Monday – Thursday 11:00 – 23:00*	
Friday – Saturday 11:00 – 00:00*	
Sunday 12:00 – 00:00*	<b>12:00-23:00hrs*</b>
<b>Any playing of recorded music</b>	
Monday – Thursday 11:00 – 00:00*	<b>11:00-23:00hrs*</b>
Friday – Saturday 11:00 – 02:00*	<b>11:00-00:00hrs*</b>
Sunday 12:00 – 00:00*	<b>12:00-23:00hrs*</b>
<b>Entertainment of a similar description</b>	
Monday – Thursday 11:00 – 23:00*	
Friday – Saturday 11:00 – 00:00*	
Sunday 12:00 – 00:00*	<b>12:00-23:00hrs*</b>

**Provision of facilities for making music**

Monday – Thursday 11:00 – 23:00\*

Friday – Saturday 11:00 – 00:00\*

Sunday 12:00 – 00:00\*

**12:00-23:00hrs\***

**Provision of facilities for dancing**

Monday – Thursday 11:00 – 00:00\*

**11:00-23:00hrs\***

Friday – Saturday 11:00 – 02:00\*

**11:00-00:00hrs\***

Sunday 12:00 – 00:00\*

**12:00-23:00hrs\***

**Provision of entertainment facilities of a similar description**

Monday – Thursday 11:00 – 23:00\*

Friday – Saturday 11:00 – 00:00\*

Sunday 12:00 – 22:30\*

**Provision of late night refreshment**

Monday – Thursday 23:00 – 00:00\*

Sunday 23:00-00:00\*

*Report author - If authorised hours are reduced to 23:00hrs Monday to Thursday and Sunday, late night refreshment hours are not required on these days because authorisation is only required after 23:00hrs.*

Friday and Saturday 23:00 – 02:00\*

**23:00-00:00hrs\***

*Report author – the asterisk\* next to the hours above refers to non-standard hours on the premises licence - “\*On all Bank Holidays (except Christmas) to include the preceding day (at Easter to also include the preceding Thursday); for Christmas (to include Christmas Eve); up to the terminal hour set for Saturdays (i.e. 02:00). The retail sale of alcohol is permitted between the finish time on New Year’s Eve and the start time on New Year’s Day.”*

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*Report author – the applicant has used the word ‘closing time’ in the reduction of hours section but there is no reference to opening hours in the review application. The current opening hours on the licence are:*

*Monday – Thursday 10:00 – 00:30\**

*Friday – Saturday 10:00 – 02:30\**

*Sunday 10:00 – 00:30\**

*The opening hours shown on a licence generally have no force at law, with a single exception – where they are imposed by a General Licensing Panel/Licensing Sub-Committee following an application for review of the licence.*

*The report author on behalf of the Licensing Authority has requested the applicant to formally clarify their intentions regarding opening hours. This could include a request for the General Licensing Panel to consider imposing reduced opening hours and appropriate conditions if necessary.*

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#### **(iv): Premises licence 'Conditions' to be added**

Sussex Police also invite the Panel to strongly consider the addition of conditions to the premises licence, some of which will replace current conditions which require updating. The proposed full wording for each condition is listed in the review application.

In summary, the conditions relate to:

- Management
- CCTV
- Training
- Age verification
- Incident reporting and refusals
- Drug policy
- SIA door persons
- 'ID' scan

#### **Sussex Police exhibits**

Please see the exhibits which are reproduced in Appendices D to D15.

### **2.1 Environmental health/licensing records**

The following recent licensing related (other matters apart from music and noise) complaints are recorded on the Council's licensing database.

WK202007309, August 2020. **Swearing and fighting**, noise from patrons leaving late. Allegations of **out of hours opening**.

WK202005535, July 2020. Consistent noise (shouting from customers, **arguing and fighting, glasses breaking**).

### **3. Relevant representations from 'interested parties'**

The application has been subject to the usual public advertisement.

Interested parties	Relevant licensing 'objective'
Two	'Prevention of crime and disorder' and 'prevention of public nuisance'.

The representations are reproduced in Appendix E.

### **4. Representations from responsible authorities**

The Licensing Act 2003 requires that a copy of the review application is sent to the responsible authorities.

Rother DC Planning	No representation
Rother DC Env Health Pollution Team	Representation
Rother DC Env Health Food & Safety Team	Representation
East Sussex Fire & Rescue Service	No representation
Sussex Police	'Review' applicant
ESCC Child Protection	No representation
ESCC Public Health	No representation
ESCC Trading Standards	No representation
Home Office Immigration Enforcement	No representation

#### Rother DC Environmental Health (Food & Safety Team)

The Environmental Health Team (Food and Safety), Rother District Council, as the enforcing authority for this premises within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974, made a representation regarding the 'public safety' licensing objective. The representation is reproduced in Appendix F.

#### Rother DC Environmental Health (Pollution)

The Environmental Health Team (Pollution), Rother District Council, made a representation regarding the 'prevention of public nuisance' licensing objective. The representation is reproduced in Appendix G.

## 5. Summary

The Review application relates to failures to uphold the 'prevention of crime and disorder' and 'public safety' licensing objectives. Representations have also been made regarding failures to uphold the 'prevention of public nuisance' licensing objective.

The applicant invites the Panel to consider reviewing the Premises Licence leading to:

- ~~Removal of the Designated Premises Supervisor (DPS).~~
- Suspension of the Premises Licence.
- Reduction in late night authorised hours for licensable activities.
- The addition of Premises Licence conditions related to: Management, CCTV, Training, Age verification, Incident reporting and refusals, Drug policy, SIA door persons, 'ID' scan.

## 6. Legislation

The Licensing Act 2003 requires that the Council, as the local Licensing Authority, carry out its functions with a view to promoting the four Licensing Objectives:

- a) The Prevention of Crime and Disorder
- b) Public Safety
- c) The Prevention of Public Nuisance
- d) The Protection of Children from Harm

In exercising those functions, the Licensing Authority must also have regard to Guidance issued by the Secretary of State and its own Statement of Licensing Policy.

Under Section 181 and Schedule 5 (Part 3) of the Licensing Act 2003, rights of appeal exist, to the Magistrates' Court, against the decision of the Licensing Authority. Such appeal may be made on behalf of:

- a) the applicant;
- b) the holder of the Premises Licence; or
- c) any other person who made relevant representations in relation to the application.

## 7. Consideration

When considering this Review application, under Section 52 Licensing Act 2003, the following options (if any) are available to the Panel:

- a) to modify the conditions of the Licence;
- b) to exclude a licensable activity from the scope of the Licence;
- c) ~~remove the designated premises supervisor;~~
- d) to suspend the Licence for a period not exceeding three months; or
- e) to revoke the Licence,

and for this purpose, the conditions of the Licence are modified if any of them is altered or omitted, or any new condition is added.

*Option c) is not applicable because on the 26/10/2020 there is not a DPS stated on the premises licence.*

## Legal Implications

- 8. The applicant and others who are party to the application have a right of appeal to the Magistrates' Court.



## Human Rights

9. Article 1 of the first protocol, Part II of the Act refers to the peaceful enjoyment of possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. The Council's actions must therefore be necessary and proportionate and be in the public interest. In the interests of a fair trial under Article 6, the premises licence holder or his/her legal representative should be given an opportunity to address the Panel.

The Panel's decision making is guided by the principles of proportionality which require, amongst other things, the Panel to strike the appropriate balance between the competing interests of the applicant, the premises licence holder, the interested parties and the wider community. This balance is achieved by having regard to the provisions of the Licensing Act 2003; the Regulations and Guidance made thereunder, the Council's Statement of Licensing Policy and the Council's obligation to act in a way that is consistent with the provisions of the Human Rights Act 1998.

## Crime and Disorder

10. The Prevention of Crime and Disorder is a specific licensing objective and the Council also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in its district.

## Conclusion

11. Having considered the Review application, representations, written and oral submissions made at the hearing, the Panel shall determine the application.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	No
Crime and Disorder	Yes	Consultation	No
Environmental	No	Access to Information	No
Sustainability	No	Exempt from publication	No
Risk Management	No		

Chief Executive	Malcolm Johnston
Proper Officer:	Richard Parker-Harding
Report Contact Officer:	Mark Randolph, SEHO, Senior Licensing Officer
e-mail address:	licensing@rother.gov.uk
Appendices:	Appendix A: Location Plan Appendix B: Photographs Appendix C: Review application Appendix D: Sussex Police Schedule of Evidence (exhibits 1 to 15)

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Appendix D1: Sussex Police Exhibit 1 - Insp Carroll statement dated 15 09 2020

Appendix D2: Sussex Police Exhibit 2 - Insp Hartley statement dated 16 09 2020

Appendix D3: Sussex Police Exhibit 3 – PC Buck statement dated 13 08 2020

Appendix D4: Sussex Police Exhibit 4 - GE Security Statement

Appendix D5: Sussex Police Exhibit 5 – Warning Letter to PLH dated 26 01 2017

Appendix D6: Sussex Police Exhibit 6 – Warning Letter to DPS dated 23 11 2019

Appendix D7: Sussex Police Exhibit 7 – DPS response dated 25 11 2019 to Warning Letter dated 23 11 2019

Appendix D8: Sussex Police Exhibit 8 – Advisory Letter to DPS dated 07 02 2020

Appendix D9: Sussex Police Exhibit 9 – PC Stacey statement dated 14 09 2020

Appendix D10: Sussex Police Exhibit 10 – PCSO Scott statement dated 22 09 2020

Appendix D11: Sussex Police Exhibit 11 – PC Beazer statement dated 17 09 2020

Appendix D12: Sussex Police Exhibit 12 – SIA Manager statement

Appendix D13: Sussex Police Exhibit 13 – SIA guard (1) statement

Appendix D14: Sussex Police Exhibit 14 – SIA guard (2) statement

Appendix D15: Sussex Police Exhibit 15 – Resident’s statement dated 16 09 2020

Appendix E: Representations from ‘interested parties’

Appendix F: Representation from Env.Health Team (Food and Health & Safety)

Appendix G: Representation from Env.Health Team (Pollution)

Appendix H: A copy of the premises licence (issued January 2016)

Appendix I: Premises licence plan

Appendix J: Update from Premises Licence Holder 26 10 2020

Relevant Previous Minutes: N/A

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Background Papers: NONE

Reference Documents: Revised guidance issued under Section 182 of Licensing Act 2003  
(Chapter 11 – Reviews)  
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

Rother District Council – Licensing Policy  
<https://www.rother.gov.uk/licences-and-permits/licensing-act-2003/beer-and-entertainment-additional-information/>

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