

**Agenda Item No:** 6

**Report to:** Licensing Sub-Committee

**Date of Meeting:** 13.10.2011

**Report Title:** Application for premises licence with representations. Kebab Hut. 1  
Claremont, Hastings.

**Report By:** Mike Hepworth  
Head of Environmental Health

---

### **Purpose of Report**

To consider the application for a licence as a result of representations received.  
Responsible Authority (Two).

---

### **Recommendation(s)**

- 1. Members consider the content of the report, the options available and reach a decision.**

---

### **Reasons for Recommendations**

The Licensing Act 2003 requires a licensing sub committee to consider such applications when appropriate representations have been made. The decision reached at the sub committee can be subject to appeal by any party to the hearing who is aggrieved by the decision.

---

## Introduction

### 1.0 Background History

1. On 7th February 2005 the Licensing Act 2003 came into force for all local authorities, marking the practical commencement of the Government's new liquor licensing regime, which includes licensing of regulated entertainment and late night refreshment.
2. On the 15th July 2011 Hastings Borough Council received an application for a new premises licence for Kebab Hut, 1 Claremont, Hastings, TN34 1HA from dm3 Licensing Ltd acting for Mr Sen Akar, trading as Hastings Food Ltd, made under Section 17 the Licensing Act 2003. (Attached at Appendix A).
3. The premises at 1 Claremont, Hastings has operated as a late night venue for several years trading as Kebab Hut and Pizza with a different licence holder. (Attached map appendix B).
4. The premise does not currently hold a premises licence under the Licensing Act 2003. The licence for the old business being revoked by licensing sub committee on 2nd February 2010.

### 2.0 Application

The application requests the following:

5. To licence hours for late night refreshment to 23.00hrs to 05.00hrs, Monday to Sunday.
6. To operate 24 hr opening hours for the premises, Monday to Sunday.
7. When submitting an application for a licence under the Licensing Act 2003 the applicant is asked to describe what steps, if any, they intend to take to promote the four licensing objectives:-
8. the prevention of crime and disorder,
9. public safety,
10. prevention of public nuisance,
11. protection of children from harm.
12. In this case the applicant has made a declaration on page 13 of the application. (See appendix A)

### 3.0 Consultation

13. The Licensing Act 2003 requires an applicant to advertise their application once in a local newspaper and on the premises by way of an approved notice for 28 days to allow for representations to be made, this has been done.

14. Copies of the application are required to be served on a list of responsible authorities at the same time as placing the application before the local authority, this has been done.
15. As a result of this process two representations have been received, one from the Police who comment on the application and the past problems with crime and disorder from the premises concerned. I consider this to be a valid representation under the licensing objective (Prevention of Crime and Disorder). (Attached Appendix C).
16. A second representation has been received from Mr Bell, Principal Environmental Health Officer in Environmental Protection, he comments on the past history of the premises and his concerns for the disturbance of local residents. I consider this to be a valid representation under the licensing objective (Prevention of Public Nuisance). (Attached Appendix C).
17. Both the Police and Mr Bell make additional comment on the application, in that it does not address the fact that the premises is within the Special Saturation Policy Area 1.
18. The Special Saturation Policy (Cumulative Impact) is contained within the Council's Licensing Policy, it states "Each application will be considered on its own merit. Where no representations are received any application will be granted in terms consistent with the operating schedule. Where relevant representations are received in relation to applications for the grant of a new premise licence, club premise certificate or provisional statement; there will be a presumption against the grant of such licence or certificate unless the applicant, in the operating schedule, can rebut the presumption that the granting of such a licence or certificate would undermine the licensing objectives." Applicants are advised to seek legal advice if making an application for a licence in a Special Saturation Area.

#### **4.0 Legal Considerations**

19. The Licensing Act 2003 is now the only legislation that allows premises to be licensed for late night refreshment.
20. If a relevant representation to an application is made by either a responsible authority or an interested party and no compromise can be reached between the parties, a hearing must be held.
21. The Department for Culture, Media and Sport has issued guidance under Section 182 of the Licensing Act 2003. This guidance is provided to Licensing Authorities to assist them in carrying out their functions.
22. All members of the Licensing Committee have been supplied with copies of the DCMS Government guidance and the Hastings Borough Council Statement of Licensing Policy.
23. Human rights considerations must be taken into account fully in balancing licensing issues, in particular, article 1 of the first protocol and article 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property. Article 8 relates to the right to respect for private and family life, home and

correspondence. These are however qualified rights and can be deprived of “in the public interest”. Interference is permissible if what is done:-

24. Has its basis in law;
25. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
26. Is proportionate to the aims being pursued; and,
27. Is related to the prevention of crime; or, the protection of public order or health.
28. If members chose to refuse the application in full or in part, the applicant has a right of appeal to the Magistrates’ Court. There is also a right of appeal to conditions imposed as a result of the hearing.

## 5.0 Options

29. Grant the application in full.
30. Grant part of the application.
31. Grant the application with additional conditions relevant to the application.
32. Refuse the application.

Members are reminded they must give written reasons for their decision.

---

### Wards Affected

Castle

---

### Area(s) Affected

Central Hastings

---

### Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No

---

### Background Information

Application Form.	Appendix A.
Map of Location.	Appendix B.
Representations.	Appendix C.

---

---

**Officer to Contact**

Bob Brown Licensing Manager.  
bbrown@hastings.gov.uk  
01424 783249

---