

Agenda Item No: 6

Report to: Licensing Sub-Committee

Date of Meeting: 26th April 2012

Report Title: Licence variation application with representations. Co Operative
London Road, St Leonards on Sea

Report By: Mike Hepworth
Head of Environmental Health

Purpose of Report

To consider the application to vary the licence as a result of representations received.
Responsible Authorities 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.
2. On the 28th February 2012 Hastings Borough Council received an application to vary the premises licence of Co-Operative Supermarket, 32 London Road, St Leonards on Sea, TN37 4AN, from Co-operative Group Food Ltd, the premises licence holder, made under Section 34 the Licensing Act 2003. (Attached Appendix A).
3. The Co-operative store has operated in London Road, St Leonards on Sea for many years by the present license holders. (Attached map Appendix B).
4. The premise currently holds a premises licence under the Licensing Act 2003 having been transferred from the magistrate's court in 2005. (Attached Appendix C).
5. This existing premises licence covers the use of the premises for the sale of Alcohol by retail for "Off Sales", the licensable activity times being Monday to Saturday 08.00 - 23.00hrs, Sunday 10.00 - 22.30hrs, Good Friday 08.00 - 22.30hrs and Christmas Day 12.00 - 15.00hrs and 19.00 - 22.30hrs as shown on the attached licence. The premises opening hours Monday to Saturday 07.00 - 22.00hrs and Sunday 09.00 - 22.00hrs.

2.0 Application

The application requests the following variation to the existing licence:

6. To extend the licensed hours for the sale of Alcohol and the opening hours Monday to Sunday to 6am to 11pm.
7. When submitting an application to vary a licence under the Licensing Act 2003 the applicant is asked to describe what additional 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 limited declaration on page 19 of the submitted application. (See appendix A)
13. The Co-operative store is situated in Area 3 of the Special Saturation (Cumulative Impact) Policy (SSP) which is contained within Hastings Borough Council's Liquor Licensing Policy. It was initially adopted following consultation in January 2008 and has been reviewed on two further occasions since to ensure it is based on accurate and updated information, it was formally adopted by Council again in January 2011.
14. The SSP states "This policy relates to applications for the grant and/or variation of premises licences, club premises certificates or the issue of provisional statements. Each application will be considered on its own merits. Where no representations are received any application will be granted in terms consistent with the operating schedule.....Application for the variation of a premises licence or club premises certificate resulting in the extension of hours, change of style of operation or increased capacity; there will be a presumption to refuse such applications where relevant representations are received and the variation would undermine the licensing objectives, unless the applicant can rebut the presumption that the granting of such a variation would undermine the licensing objectives."

3.0 Consultation

15. The Licensing Act 2003 requires an applicant to advertise their variation 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.
16. Copies of the application to vary 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.
17. As a result of this process two representations have been received, one from Sussex Police, they comment on the application and that the premises are situated within the St Leonards on Sea Saturation Zone and that the applicant has failed to demonstrate that the application will result in no negative impact on one or more of the licensing objectives.(Attached Appendix D)
18. A second representation has been received from Mr Bell, Principal Environmental Health Officer (Pollution), he comments on the application and the potential for disturbance if the application was granted. He asks the sub committee to consider imposing a condition to restrict deliveries to the store between 07.00 - 20.00 hours. (Attached Appendix D).

4.0 Legal Considerations

19. The Licensing Act 2003 is now the only legislation that allows premises to be licensed for supply of Alcohol and regulated entertainment.
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. Holding a premises licence would be considered a possession. 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 variation 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 variation in full.
30. Grant part of the variation.
31. Grant the variation with additional or alternative conditions relevant to the application.

Wards Affected

Central St. Leonards

Area(s) Affected

South St. Leonards

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	No
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	No

Background Information

Application Form.	Appendix A.
Map of Site.	Appendix B.
Current licence.	Appendix C.
Representations.	Appendix D.

Officer to Contact

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Appendices A, B, C & D for this agenda cannot be published because of the complex images that they contain. If required a copy can be obtained by contacting Emily Horne, Committee Administrator Tel: 01424 451719, or by emailing ehorne@hastings.gov.uk