

Agenda Item No: 6

Report to: Licensing Sub-Committee

Date of Meeting: 17th September 2012

Report Title: Review of Premises Licence. The Wishing Tree PH.

Report By: Mike Hepworth
Head of Environmental Services

Purpose of Report

To consider an application to review the Premises Licence as a result of representations received.
Responsible Authorities. One.
Other Parties. Three.

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 at the Magistrates Court by any party to the hearing who is aggrieved by the decision.

Introduction

1.0 Background

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 31st July 2012 Hastings Borough Council received an application for the review of an existing premises licence for The Wishing Tree PH, 63 Wishing Tree Road North, St Leonards on Sea, TN38 9LJ from Mr David Bell, Principal Environmental Health Officer, Environmental Protection Team, Hastings Borough Council, made under Section 51 the Licensing Act 2003. (Attached at Appendix A).
3. The Wishing Tree PH has operated in Wishing Tree Road North, St Leonards on Sea for many years, the premises licence holders are currently Mr and Mrs Farhall of 63 Wishing Tree Road North, St Leonards on Sea, East Sussex. (Attached map Appendix B).
4. The premises currently holds a premises licence under the Licensing Act 2003. (Attached Appendix C).
5. The existing premises licence covers the use of the premises for live music, recorded music, karaoke and the supply by retail of alcohol.
6. It currently operates under trading hours that vary according to the type of licensable activity and the day of the week. The opening hours for the premises being Monday to Thursday 11.00 to 00.30hrs, Friday and Saturday 11.00 to 01.30hrs, Sunday 12.00 to 24.00hrs with an increased one hour on all bank holidays weekends to include the preceding day and for Christmas to include Christmas Eve and Boxing day.

2.0 Application

7. The grounds for review made by Mr Bell are under the licensing objective "The Prevention of Public Nuisance", I have considered the application and consider it valid and in line with the central government guidance issued on such matters.
8. When submitting an application for a review under the Licensing Act 2003 the applicant is required to send copies of the review application to the other responsible authorities listed under the Act and a copy to the premises licence holder, this has been done.
9. In addition, the licensing authority is required to place a copy of the notice on the premises concerned and the public notice board situated at the Town Hall this has been done, in addition the review notification has been placed on the Council website. These notices must remain in place for 28 days to allow further representations to be made.

10. An application for review cannot be considered by the Council's Licensing Sub-Committee until the 28 day representation period has elapsed, in this case that ended at midnight on the 28th August 2012.

3.0 Consultation

11. As a result of this consultation period, the Authority has received further representations from three local residents, who comment on the ongoing issues with the premises under the two licensing objectives "The Prevention of Crime and Disorder and The Prevention of Public Nuisance" they are considered valid under the government guidance. (Attached appendix D).
12. One of the representations from a local resident has had the name and address removed at the request of the author. They comment on their fear for reprisals if their detail is known and understand that the anonymous nature of their application reduces its evidential value. Home office guidance on such matters is clear, where a genuine and well founded fear of reprisals exists, the representation can be accepted in an anonymous format. Sadly in Hastings we have had such a situation in the past although not connected to this premises.
13. The Authority has also received a signed letter and attachments including a petition from the licence holder at the Wishing Tree PH, this does not form part of the representation process but is in support of the licence holders. Copies of this correspondence will be available at the hearing if required.

4.0 Legal Considerations

14. The Licensing Act 2003 is now the only process to licence and control premises for all forms of entertainment, late night refreshment and the sale of Alcohol.
15. The review process is laid down in statute and allows for representations to be made by specified groups of people provided they are relevant to one or more of the licensing objectives listed in the Act and are not considered frivolous, vexatious or repetitive.
16. If a relevant representation is made by either a responsible authority or an interested party, a hearing must be held.
17. 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.
18. Hastings Borough Council has developed, published and reviewed its Statement of Licensing Policy as required by the Licensing Act 2003.
19. 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.
20. 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 justices 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:-

21. Has its basis in law;
22. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
23. Is proportionate to the aims being pursued; and,
24. Is related to the prevention of crime; or, the protection of public order or health.
25. The licence holder has a right of appeal to the Magistrates Court against any decisions made by the licensing Sub-Committee with respect to this application for review.

5.0 Options

26. To modify the conditions of the licence.
27. To exclude a licensable activity from the scope of the licence.
28. To remove the designated premises supervisor.
29. To suspend the licence for a period not exceeding three months.
30. To revoke the licence.

Members are reminded they must give written reasons for their decision, to ensure that the appeal procedure can be progressed.

Wards Affected

Hollington

Area(s) Affected

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

Background Information

- Appendix A. Application for review.
 - Appendix B. Map of site.
 - Appendix C. Existing licence.
 - Appendix D. Additional representations.
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Officer to Contact

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