

Agenda Item No: 5

Report to: Licensing Sub-Committee

Date of Meeting: 16th October 2012

Report Title: Application to vary premises licence. London Trader PH.

Report By: Mike Hepworth
Head of Environmental Services

Purpose of Report

To consider the application to vary the licence as a result of representations received.
Responsible Authorities Two.
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 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 23rd July 2012 Hastings Borough Council received an application to vary the premises licence of London Trader PH, 4-7 East Beach Street, Hastings from Mr Stephen Foot the premises licence holder, made under Section 34 the Licensing Act 2003. (Attached Appendix A).
3. The London Trader PH has operated in East Beach Street, Hastings for many years by the present license holder. (Attached map Appendix B).
4. The premise currently holds a premises licence under the Licensing Act 2003. (Attached appendix C).
5. This existing premises licence covers the use of the premises for Indoor Sporting Events, Recorded Music and Supply of Alcohol on Monday to Saturday 09.00 hrs to 23.00 hrs and Sunday 09.00 hrs to 22.00 hrs. Live Music and dancing on Sunday 11.00 hrs to 21.00 hrs. All activities being extended to 01.00 hrs on New Years Eve. The premises has opening hours of Monday to Saturday 09.00 hrs to 23.30 hrs and Sunday 09.00 hrs to 22.30 hrs these being extended to 01.30 hrs on New Years Eve.
6. This licence having been amended following a review at licensing sub committee on 25th October 2011 and the subsequent appeal hearing at Hastings Magistrates court on the 10th April 2012.

2.0 Application

The application requests the following variation to the existing licence:

7. To extend the hours for the sale of Alcohol to Monday to Sunday 09.00 hrs to 00.15 hrs.
8. To extend the hours for Indoor Sporting Events to Monday to Wednesday 09.00 hrs to 23.00 hrs and Thursday to Sunday 09.00 hrs to 00.15 hrs.
9. To extend the hours for Recorded Music and Add Disco to Monday to Sunday 09.00 hrs to 00.15 hrs.
10. To extend the hours for Dancing to Monday to Sunday 09.00 hrs to 00.15 hrs.
11. To extend the terminal hour for opening the premises on Monday to Wednesday 09.00 hrs to 00.30 hrs and Thursday to Sunday 09.00 hrs to 00.45 hrs.

12. To extend the hours for recorded music, discos, dancing and opening hours on New Years Eve until the end of the permitted hours to the start of the following day.
13. To extend the hours for recorded music, discos, dancing and opening hours on all bank holidays to include the preceding day up to the terminal hour for Saturdays at the latest.
14. In addition the application seeks to amend 5 of the existing conditions placed on the licence at the appeal hearing in April, they are;
 - Condition 1 to be amended to "Recorded music to be barely audible to the nearest dwelling"
 - Condition 2 Hours to varied as per application
 - Condition 3 Opening hours to be varied as per application.
 - Condition 4 Live music condition to be amended to "To be barely audible to the nearest domestic dwelling".
 - Condition 9 to be amended to "The hours that door supervisors should be used 21.00hrs to close of business on Friday and Saturday. Sunday 30 mins before and after live music April to Sept and on all other special occasions listed by Hastings Borough Council".
15. 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:-
16. the prevention of crime and disorder,
17. public safety,
18. prevention of public nuisance,
19. protection of children from harm.
20. In this case the applicant has made a limited declaration on page 19 of the application.(See appendix A)

3.0 Consultation

21. 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.
22. 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.
23. As a result of this process two representations have been received from responsible authorities, one from Sussex Police, they make their representation on the grounds of both Prevention of Crime and Disorder and Prevention of Public Nuisance. They comment on the application and the previous and current history of

the premises, they contend that the application is submitted to soon after the appeal hearing. They invite the committee to refuse the application.

24. A second representation has been received from Mr Bell, Principal Environmental Health Officer (Pollution), he also comments on the application and the past record of the premises, he further comments on the potential for the premises to cause further problems for residents if the variation was granted. Included in his representation is an anonymous letter from a local resident who has written direct to him in response to this application. Mr Bell has concluded that the application should not be granted. I consider both these to be valid representations under the licensing objectives (Prevention of Public Nuisance) (Prevention of Crime and Disorder). (Attached Appendix D).
25. In addition I have received two further representations from other parties, one from the local residents association that comments on existing problems with the premises and a further one from a local resident who comments on previous problems with the premises and the noise nuisance endured over many months. Again this resident has asked for their personal details to be removed from the representation for fear of reprisals.
26. Persons making representations are generally expected to allow their personal details to be given to the applicant, however where genuine reasons for removing their personal data are present, licensing authorities can do so in line with the Home Office guidance (9.22 to 9.26 refers).
27. In this case this is considered appropriate, a representation made by a local resident at a previous licensing hearing for a nearby property resulted in a campaign of intimidation against the resident. They eventually had to leave their home and move from the area. There is no suggestion that would occur this time but a genuine concern has been raised by the two persons making representations.
28. A further letter of support for the application has been received, it comments on the perceived improvements made at the premises. Whilst this is not an official representation as required under the Act, a copy of the letter will be available at the hearing if needed.

4.0 Legal Considerations

29. The Licensing Act 2003 is now the only legislation that allows premises to be licensed for supply of Alcohol and regulated entertainment.
30. 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.
31. 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.
32. 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.

33. 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:-
34. Has its basis in law;
35. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
36. Is proportionate to the aims being pursued; and,
37. Is related to the prevention of crime; or, the protection of public order or health.
38. 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

39. Grant the variation in full.
40. Grant part of the variation.
41. Grant the variation with additional or alternative conditions relevant to the application.
42. Refuse the application.

Wards Affected

Old Hastings

Area(s) Affected

East 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
Local People’s Views	No

Background Information

Appendix A. Variation Application.
Appendix B. Map of Site.
Appendix C. Existing Licence.
Appendix D. Representations.

Officer to Contact

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