

Agenda Item No: 5

Report to: Licensing Sub-Committee

Date of Meeting: 10th December 2012

Report Title: Application for variation of premises licence. Flames Grill, Havelock Road, Hastings

Report By: Mike Hepworth
Head of Environmental Services

Purpose of Report

To consider the application for a variation of a premises licence as a result of representations received.
Responsible Authorities. One.

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 regulated entertainment and late night refreshment.
2. On the 26th September 2012 Hastings Borough Council received an application for a variation to an existing premises licence for Flames Grill, 19 Havelock Road, Hastings from Heringtons Solicitors, Hastings representing Mr Caglar Kanik, 19 Havelock Road, Hastings, the licence holder, made under section 34 the Licensing Act 2003. (Attached at appendix A).
3. Flames Grill is an existing late night refreshment venue which has operated for many years. (Map attached at appendix B.)
4. The premises does currently hold a premises licence under the Licensing Act 2003, the licence currently authorises the provision of late night refreshment, the times being Monday to Wednesday 23.00hrs to 02.00hrs and Thursday to Saturday 23.00hrs to 04.00hrs and Sunday 23.00hrs to 02.00hrs Sundays preceding Bank Holiday Monday until 03.00hrs. (Existing Licence attached appendix C)

2.0 Application

5. The application requests the following:
6. To have late night refreshment on Monday to Wednesday 23.00 to 02.00hrs (no change), Thursday to Saturday 23.00 to 05.00hrs and Sunday 23.00 to 02.00hrs with Sunday preceding Bank Holiday Monday until 05.00hrs. In addition, if Christmas Eve or New Years Eve fall on a Monday / Tuesday or Wednesday to extend hours until 05.00hrs
7. To have opening hours of the premises as Monday to Wednesday 23.00 to 02.00hrs (no change), Thursday to Saturday 23.00 to 05.00hrs and Sunday 23.00 to 02.00hrs with Sunday preceding Bank Holiday Monday until 05.00hrs. In addition, if Christmas Eve or New Years Eve fall on a Monday / Tuesday or Wednesday to extend hours until 05.00hrs
8. When submitting an application for a licence under the Licensing Act 2003 the applicant is asked to describe what steps they intend to take to promote the four licensing objectives:-
 - the prevention of crime and disorder,
 - public safety,
 - prevention of public nuisance,

- protection of children from harm.
9. In this case the applicant has made an additional supporting statement at the end of their application.(See appendix A)

3.0 Consultation

10. 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, in this case the premises notice was found to be missing when checked on several occasions and as a result the period of representation was extended to allow for the proper representation period.
11. 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.
12. As a result of this process one representation has been received from Ch Insp Keating, Hastings Police, she comments on the application and the lack of information to show that the applicant has considered the Special Saturation Policy and therefore invites the committee to refuse the application. In addition, she has included recent crime data around the premises. I consider this a valid representation under the licensing objective (Prevention of Crime and Disorder) (Attached appendix D.)
13. As stated above the Police make comment on the application, in that it is within the Special Saturation Policy Area 1. 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

14. The Licensing Act 2003 is now the only legislation that allows premises to be licensed for either the sale of Alcohol or the supply of regulated entertainment.
15. 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.
16. 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.

17. 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.
18. 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:-
19. Has its basis in law;
20. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
21. Is proportionate to the aims being pursued; and,
22. Is related to the prevention of crime; or, the protection of public order or health.
23. If members chose to refuse the application in full or in part, the applicant and any person affected by the decision, 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

24. Grant the application in full, with or without relevant conditions attached.
25. Grant the application in part, with or without relevant conditions attached.
26. Refuse the application.

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	No
Economic/Financial Implications	No
Human Rights Act	Yes

Organisational Consequences
Local People's Views

No
No

Background Information

Appendix A. Variation application.
Appendix B. Map of venue.
Appendix C. Existing licence.
Appendix D. Representation.

Officer to Contact

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