

Agenda Item No: 6

Report to: Licensing Sub-Committee

Date of Meeting: 16.09.2013.

Report Title: Review of premise licence. Erols Kebab and Steak House.

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. 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 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 9th August 2013 Hastings Borough Council received an application for the review of an existing premises licence for Erols Kebab and Steak House, 194 Queens Road, Hastings, TN34 1RG from Mr Barnaby Brown, Senior Trading Standards Officer, East Sussex County Council Trading Standards Service, Eastbourne, made under Section 51 the Licensing Act 2003. (Attached at Appendix A).
3. Erols Kebab and Steak House has operated at 194 Queens Road for a number of years, the premises being transferred from the Justices licence system in August 2005, the premises licence holder has throughout that time been Mr Naki Kanik, 19 Havelock Road, Hastings, TN34 1BP. (Attached map Appendix B).
4. The premise 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 the ' On Sales ' supply by retail of Alcohol and Late Night Refreshment. The alcohol part of the licence is a transfer of the old restaurant licence under the justices system, it has a special condition attached to the licence which states;
 - Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such person as an ancillary to his meal.
6. It currently operates under the following trading hours;
 - Late night refreshment Monday to Sunday 23.00 - 02.30 hrs.
 - Sale of alcohol. Monday to Sunday 10.00 - 00.00 hrs
Sunday/ Good Friday/ Christmas Day 12.00 - 23.30 hrs
New Years Eve 10.00 - 23.30 hrs
7. The designated premise supervisor for the premises is also Mr Naki Kanik, he has been in that position since the transfer of the licence to the new licensing regime in 2005.

2.0 Application

8. The grounds for review made by Mr Barnaby Brown are under the licensing objectives "The Prevention of Crime and Disorder" and "Public safety" I have considered the application and consider it valid and in line with the central government guidance issued on such matters.

9. In their application for review, trading standards comment about two visits to the premises in March and June 2013, where, on the first occasion alcohol that was illicit and counterfeit were seized and on the second occasion when alcohol products were purchased for "Off" sale, as a result they are seeking the revocation of the premises licence.
10. 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.
11. 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.
12. 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 5th September 2013.

3.0 Consultation

13. As a result of this consultation period, the Authority has received one further representation, this was from Sussex Police. They comment on the application for review and state that the premise has a history of licence breaches, which they detail in their representation. They also comment on the lack of control by the license holder Mr Kanik and support the request by trading standards for the licence to be revoked by the sub committee. (Attached appendix D)

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 other party, a hearing must be held.
17. The Home Office 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 Official 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

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	No
Local People's Views	No

Background Information

Appendix A. Application for review.
Appendix B. Location Map of premises.
Appendix C. Existing premises licence.
Appendix D. Police representation
Appendix E. Trading Standards representation

Officer to Contact

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Appendices A, B, C, D and E could not be published on the Council's website because of the complex information that they contain. Copies may be obtained from Emily Horne, Tel: 01424 451719 or emailing: ehorne@hastings.gov.uk