

Agenda Item No: 7

Report to: Licensing Sub-Committee

Date of Meeting: 16.09.2013.

Report Title: Request to transfer premises licence with representation. Erols Kebab.

Report By: Mike Hepworth
Head of Environmental Services

Purpose of Report

To consider an application to transfer a Premises Licence as a result of representation received by the Police.

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 an appropriate representation has 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 7th August 2013 Hastings Borough Council received an application for the transfer of an existing premises licence for Erols Kebab and Steak House, 194 Queens Road, Hastings, TN34 1RG from Mr Ceyhun Varol, 194 Queens Road, Hastings made under Section 42 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 has been Mr Naki Kanik, 19 Havelock Road, Hastings, TN34 1BP, he has consented to the transfer. (See Appendix A).
4. 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.
5. 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
6. 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

7. The application for a transfer of an existing premises licence is normally a straightforward licensing procedure and is dealt with as an administrative matter. The applicant is required to serve a copy of the application to transfer on the Police, this has been done.

8. To object to the application, the police must be satisfied that there are exceptional circumstances in the case that the granting of the application would undermine the crime prevention objective. In such circumstances they must serve a notice on the licensing authority within 14 days of receiving the application, which has been done in this case. (See appendix B)
9. In their notice of objection the police have commented upon the ongoing review of the premises by Trading Standards which they support. They comment on the fact that the applicant, Mr Varol, was managing the premises at the times mentioned in the review and therefore have no confidence in the management of the premises. The issues covered by the review are all matters connected to the licensing objective "Prevention of Crime and Disorder" I consider this to be a valid objection notice under the Act.
10. A challenged application for transfer must be considered by the Council's Licensing Sub-Committee within 20 working days following the end of the representation period of the police, in this case that ended at midnight on the 19th September 2013.

4.0 Legal Considerations

11. 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.
12. The transfer process is laid down in statute and allows for a police objection notice in exceptional circumstances, it should be made under the Crime prevention objective. If a relevant objection notice is served by the police on the licensing authority, a hearing must be held.
13. 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.
14. Hastings Borough Council has developed, published and reviewed its Statement of Licensing Policy as required by the Licensing Act 2003.
15. 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.
16. 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:-
17. Has its basis in law;
18. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;

19. Is proportionate to the aims being pursued; and,
20. Is related to the prevention of crime; or, the protection of public order or health.
21. Both the applicant and the Police have a right of appeal to the Magistrates Court against any decisions made by the licensing Sub-Committee with respect to this application for transfer.

5.0 Options

22. To allow the application to transfer.
23. To refuse the application to transfer.

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

Wards Affected

None

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 to Transfer
Appendix B. Police objection notice.

Officer to Contact

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Appendices A and B 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

