

**Agenda Item No: 6**

**Report to:** Licensing Sub-Committee

**Date of Meeting:** 22nd October 2013

**Report Title:** Variation of premises licence. London Trader PH. with representations.

**Report By:** Mike Hepworth  
Head of Environmental Services

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### **Purpose of Report**

To consider the application to vary the licence as a result of representations received.  
Responsible Authorities. Two.  
Other parties. Four.

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### **Recommendation(s)**

- 1. Members consider the content of the report, the options available and reach a decision.**

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### **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.

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## 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 30th August 2013 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 Wednesday 09.00hrs to 23.30hrs, Thursday to Saturday 09.00hrs to 23.45hrs and Sunday 09.00hrs to 23.00hrs.
  - Live Music and dancing on Sunday 11.00hrs to 21.00hrs.
  - All activities being extended to 01.00hrs on New Years Eve and Sundays preceding Bank Holidays and Christmas Eve and Boxing Day when on a Sunday until 23.45hrs.
  - The premises has opening hours of Monday to Wednesday 09.00hrs to 00.00hrs, Thursday to Saturday 09.00 to 00.15hrs and Sunday 09.00hrs to 23.30hrs these being extended to 01.30hrs on New Years Eve and Sundays preceding Bank Holidays and when falling on Christmas Eve and Boxing Day.
6. This licence having been amended following a variation hearing on the 23rd October 2012. The other conditions attached were placed at a Review Hearing 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, indoor sporting events, recorded music to Sunday to Wednesday 09.00hrs to 00.00hrs and Thursday to Saturday from 09.00hrs to 02.30hrs.

8. To extend the hours for live music for every day Monday to Sunday 11.00hrs to 23.00hrs.
9. To add the facility for Disco on Sunday to Wednesday 09.00hrs to 00.00hrs and Thursday to Saturday 09.00hrs to 02.30hrs.
10. To add the facility for late night refreshment Sunday to Wednesday 23.00hrs to 00.00hrs and Thursday 23.00hrs to 02.30hrs.
11. To extend the terminal hour for opening the premises on Sunday to Wednesday 09.00hrs to 00.30hrs and Thursday to Saturday 09.00hrs to 03.00hrs.
12. All licensable activities on New Years Eve and on Sundays preceding Bank Holidays and when they fall on a Christmas Eve or Boxing Day, until 02.30hrs with closing time extended to 03.00hrs.
13. In addition the application seeks to amend one of the existing conditions placed on the licence at the variation hearing in October 2012, it currently states;
  - The seating area (hatched in black on the attached plan) is to be controlled by SIA registered supervisor from 21.00hrs to close of business on Fridays. 18.00hrs to close of business on Saturdays and 30 minutes before, during and after the performance of any live music on Sundays. This condition is to apply from 1st April to 31st October and on recognised other special occasions as agreed with Hastings Borough Council Licensing Authority to include Hastings Carnival, Hastings Bonfire celebrations, May Day Holiday Monday, Jack in the Green Event, Biker May Day Rally and Pirate's Day and other Bank Holidays.
  - To be changed to; Security staff May to September on Saturday 21.00hrs to close and Sunday 30 mins before, during and after live music and the same on special event days.
14. 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:-
15. The Prevention of Crime and Disorder,
16. Public Safety,
17. Prevention of Public Nuisance,
18. Protection of children from harm.
19. In this case the applicant has made a limited declaration on page 19 of the application. (See appendix A)

### 3.0 Consultation

20. 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.

21. 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.
22. 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 within the application the additional steps proposed to promote the licensing objectives are insufficient and unenforceable, in addition they comment on the fact that the application seeks hours greater than those held prior to the review in 2011. They invite the committee to refuse the application.
23. A second representation has been received from Mr Greg Casey, 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. He comments further on the improvements made to the premises but is concerned that the hours sought in the variation will take the closing time far past any other premises in the area and as a result the premises could become a late night magnet. Mr Casey invites the Sub-Committee to refuse the application. I consider this to be a valid representation under the licensing objectives (Prevention of Public Nuisance) (Prevention of Crime and Disorder). (Attached Appendix D).
24. In addition I have received four (4) further representations from other parties, one from the local residents association that comments on past problems with the premises and a further three from local residents who comments on previous problems with the premises and the noise nuisance endured over many months. I received a further letter of objection form a resident which I did not accept as valid, it did not conform to central government guidance. Two of the residents making representations have asked for their personal details to be removed for fear of reprisals. They accept that by doing so it will possibly dilute the weight of their representation.
25. 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).
26. 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.

## 4.0 Legal Considerations

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

28. If a relevant representation to an application is made by either a responsible authority or other interested party and no compromise can be reached between the parties, a hearing must be held.
29. 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.
30. 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.
31. 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:-
  32. Has its basis in law;
  33. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
  34. Is proportionate to the aims being pursued; and,
  35. Is related to the prevention of crime; or, the protection of public order or health.
36. 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

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

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### Wards Affected

Old Hastings

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### Area(s) Affected

East Hastings

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## 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

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## Background Information

Appendix A. Variation application.  
Appendix B. Map of site.  
Appendix C. Current licence.  
Appendix D. Representations received.

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## Officer to Contact

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