

**Agenda Item No: 5**

**Report to:** Licensing Sub-Committee

**Date of Meeting:** 24th April 2014

**Report Title:** Licensing Review. Bar Moda, Queens Road, Hastings

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

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### **Purpose of Report**

To consider an application to review the Premises Licence as a result of representations received.  
Responsible Authorities. One.

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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 at the Magistrates Court by any party to the hearing who is aggrieved by the decision.

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## 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 5th March 2014 Hastings Borough Council received an application for the review of an existing premises licence for Bar Moda, 206 Queens Road, Hastings, TN34 1QP from Principle Environmental Health Officer Mr David Steeds, made under Section 51 the Licensing Act 2003. (Attached at Appendix A).
3. Bar Moda has operated in Queens Road, Hastings for many years, the premises licence holders are Mr and Mrs Martin, of 7 Wellington Square, Hastings, East Sussex. (Attached map Appendix C).
4. The premises currently holds a premises licence under the Licensing Act 2003. (Attached Appendix D).
5. The existing premises licence covers the use of the premises for live music, recorded music, dancing, film, karaoke, late night refreshment and the supply by retail of alcohol.
6. It currently operates under trading hours that vary according to the type of licensable activity and the day of the week. The opening hours for the premises being Monday to Sunday 06.00 to 05.00, those hours can be extended to 24hrs with supply of alcohol on 12 occasions in a year with 7 days prior notice being given to both the police and the licensing authority.

### 2.0 Application

7. The grounds for review made by Mr Steeds are under the licensing objective "The Prevention of Public Nuisance", he makes extensive comment in relation to the history of complaints and the interaction between council officers and the licence holders. Should the Sub-Committee uphold the review he recommends the addition of new conditions which he lays out in his review paper. I have considered the application and accept it as valid and in line with the central government guidance issued on such matters.
8. 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.
9. 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.

10. 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 2nd April 2014.

### 3.0 Consultation

11. As a result of this consultation period, the Authority has received no further representations but Mr Steeds has submitted further papers including statements to support his initial request for review. (Attached appendix B).
12. The Authority has now received a letter concerning the review application from the Licence holders Mr and Mrs Martin explaining the actions taken by them as a result of ongoing work and since the review request. (Attached Appendix E.)

### 4.0 Legal Considerations

13. 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.
14. 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.
15. If a relevant representation is made by either a responsible authority or an interested party, 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. Hastings Borough Council has developed, published and reviewed its Statement of Licensing Policy as required by the Licensing Act 2003.
18. 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.
19. 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:-
20. Has its basis in law;
21. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;

- 22. Is proportionate to the aims being pursued; and,
- 23. Is related to the prevention of crime; or, the protection of public order or health.
- 24. 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

- 25. To modify the conditions of the licence.
- 26. To exclude a licensable activity from the scope of the licence.
- 27. To remove the designated premises supervisor.
- 28. To suspend the licence for a period not exceeding three months.
- 29. To revoke the licence.

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

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### Wards Affected

Castle

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### Area(s) Affected

Central 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)	No
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. Review application.
- Appendix B. Supporting papers.
- Appendix C. Map of venue.
- Appendix D. Existing licence.

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**Officer to Contact**

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