

**Report to: Licensing Sub - Committee**

**Date of Meeting: 31<sup>st</sup> May 2016**

**Report Title: Application for Premises licence. Yella shop**

**Report By: Mike Hepworth**

**Assistant director Environment and place.**

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### **Purpose of Report**

To consider the application for a new premises licence as a result of fourteen representations received.

Responsible Authorities. Two.

Interested Parties. Twelve.

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### **Recommendation(s)**

- 1. Members consider the content of the report, options available and determine the application.**

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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

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 4<sup>th</sup> April 2016 Hastings Borough Council received an application for a new premises licence for Yella Shop, 34 Kings Road, St Leonards on Sea from Arka Licensing Consultants Ltd, Unit B003, Tridents Business Centre, 89 Bickertsteth Road, London SW17 9SH on behalf of Mr Anton Thevarasa Johnpillai, 34 Kings Road, St Leonards on Sea, TN37 6DX, made under section 17 the Licensing Act 2003. (Attached at Appendix A).
3. This premises is a convenience store that does not hold a licence under the Licensing Act 2003 and is now applying for a new premises licence, a map of the location is attached. (Appendix B.)
4. The premise is located within Area 3 (Central St Leonards) of the Council Special Saturation Policy (Cumulative Impact).
5. 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.
6. In addition, at the latest statutory review of the Licensing Policy carried out at the end of 2015 and published in January 2016 a matrix was added to the policy. This matrix was published to help give clearer guidance to applicants for premises licenses as to how the Council would prefer the area to develop from a licensed premises perspective, and what type of application if applied for, would suit this best.
7. This matrix clearly shows that an "off" licence is not the preferred type of premises within a Saturation Area and therefore an applicant will need to clearly demonstrate that the issue of such a licence will not add to the identified problems of the area. This is in accord with the local policy details set out in paragraph 5 above.

## 2.0 Application

8. The application requests the following:
9. To have supply of alcohol for “Off” sales on Monday to Saturday from 08.00hrs to 23.00 hrs and Sunday from 10.00hrs to 23.00hrs.
10. To have opening hours of the premises, Monday to Sunday from 06.00hrs to 23.00hrs.
11. 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.
12. In this case, the applicant has made a declaration under part “M” of the application and on a separate document attached to their application.(See appendix A)

## 3.0 Consultation

13. 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, this has been done.
14. 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.
15. As a result of this process a representation has been received from Chief Inspector Phelps, Hastings Police Commander, he comments on the application and the proposed activities, he also comments on the applicant's failure to demonstrate that there will be no negative cumulative impact as the premises is within the St Leonards town centre saturation zone. He further comments on the existing problems in the area and as part of his application he includes a statement from a local police sergeant. Sussex police invite the sub- committee to refuse the application. I consider this a valid representation under the licensing objectives (Prevention of Crime and Disorder) (Attached appendix C.)
16. A further representation has been received from Mr Trevor Scrase, Senior Licensing Officer, Hastings Borough Council he comments on the application and the police response. He highlights the Council Saturation Policy Area for St Leonards on Sea and comments that the applicant has not in his opinion properly addressed it in their application. For this reason he invites the Council to apply its own policy and refuse the application. (Attached appendix C.)

17. Twelve other representations have been received from local interested parties, including local Councillors. They all comment on the existing problems in the area and how this application will add to those issues. I consider these to be valid representations under the Act. (Attached appendix C).

#### **4.0 Legal Considerations**

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 premises 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:-

- Has its basis in law;
- Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
- Is proportionate to the aims being pursued; and,
- Is related to the prevention of crime; or, the protection of public order or health.

23. If members choose to refuse the application 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 by any person affected by the decision.

#### **5.0 Options**

24. Grant the application in full

25. Grant part of the application

26. Grant the application with conditions relevant to the application

27. Refuse the application.

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**Wards Affected**

None

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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	No
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	Yes
Anti-Poverty	No

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**Additional Information**

Appendix A. Application form and attached papers.  
Appendix B. Map of Area.  
Appendix C. Representations.

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**Officer to Contact**

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