

Report to: Licensing Sub-Committee.

Date of Meeting: 27.09.2018.

**Report Title: Application for a premises licence with representations.
Ebenezer's, 20 Norman Road, St Leonards on sea.**

Report By: Mike Hepworth. Assistant Director Environment and Place.

Purpose of Report

To consider the application for a new premises licence as a result of representations received.
Responsible Authorities. Two.

Recommendation(s)

1. Member's instructions requested.

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 that 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 2018 Hastings Borough Council received an application for a new premises licence for Ebenezer's, 20 Norman Road, St Leonards on Sea from Norman Road Stores Ltd, The Old Bank House, 1 The High Street, Arundel, West Sussex, BN 18 9AD made under section 17 the Licensing Act 2003. (Attached at Appendix A).
3. This is the second application for this premises licence by this applicant, the first being held on the 23rd April 2018, when the application was heard by the licensing sub-committee and refused. (Attached decision notice Appendix D).
4. This premise is a convenience store that does not currently hold a licence under the Licensing Act 2003 and is now applying for a new premises licence. The premises was licensed and trading from 2005 to January 2018 under another name (Mary's Food Market) (Map of location attached Appendix B)
5. The premise is located within Area 3 (Central St Leonards) of the Council Special Saturation Policy (Cumulative Impact).
6. 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. This policy relates to applications for the grant and/or variation of premise licences, club premises certificates or the issue of provisional statements. Where no representations are received any application will be granted in terms consistent with the operating schedule.
7. As a result of the revised Sec 182 Guidance issued by Central Government in April 2018. Where representations are received in relation to an application, there will no longer be a presumption against the grant of such a licence or certificate. However, the Authority will expect applicants to consider their proposals carefully and supply information to support their view that the application will not add to the existing problems of the area, experienced by the high concentration of licensed venues. The Authority intends to review its current three (3) saturation zones at the next full policy review, which will commence in summer 2020 ready for implementation in 2021. Applicants seeking a licence in a Saturation Policy area are advised to seek legal advice before making an application. No information to support the application as above was submitted from the applicant.
8. 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.

9. 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 paragraphs 6-8 above.

2.0 Application

10. The application requests the following:

To have supply of alcohol for “Off” sales on Monday to Sunday from 09.00hrs to 20.00hrs.

To have opening hours of the premises, Monday to Sunday from 07.00hrs to 20.00hrs.

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.

In this case, the applicant has made a separate declaration in their application.(See appendix A).

3.0 Consultation

11. 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.
12. 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.
13. As a result of this process a representation has been received from Inspector Lewis, Licensing Inspector for Sussex police, she comments on the application and the proposed activities and the fact that this is the second application for this premise. She also comments at length on the applicant's past criminal activity and convictions under the Prevention of Crime and Disorder Objective and that the applicant has made no reference to the Councils Licensing Policy and in particular the Saturation Policy. 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.)

14. A further communication has been received from Mr John Ballam, Environmental Protection officer, Hastings Borough Council he comments on the application, makes no objection but lists a condition he would ask the sub-committee to consider adding to the licence, if a decision was made to issue the licence. (Attached appendix C.)

4.0 Legal Considerations

15. 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.

16. 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.

17. 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.

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 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.

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

20. Grant the application in full

Grant part of the application

Grant the application with conditions relevant to the application

Refuse the application.

Wards Affected

Central St Leonards .

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness
Crime and Fear of Crime (Section 17) .Yes.
Risk Management
Environmental Issues
Economic/Financial Implications
Human Rights Act. Yes.
Organisational Consequences
Local People's Views
Anti-Poverty

Additional Information

Appendix A. Application.
Appendix B. Map of site.
Appendix C. Letters of representation.
Appendix D. Decision notice for earlier hearing.

Officer to Contact

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