

Report to: Licensing Sub-Committee.

Date of Meeting: 22nd December 2021

**Report Title: Application for a Temporary Events Notices, with an objection.
Flames Grill, 19 Havelock Road, Hastings.**

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

Purpose of Report

To consider an Objection Notice to three Temporary Event Notices (TENs) served on behalf of Flames Grill, 19 Havelock Road, Hastings, TN34 1BP. Responsible Authorities. One.

Recommendation(s)

- 1. The Sub-Committee considers the Temporary Event Notices in the light of the objection notice made by Sussex Police and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives and determine whether to serve a counter notice.**

Reasons for Recommendations

The Sub-Committee must consider the oral representations and information given at the hearing before reaching a 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 December 2021, Hastings Borough Council was served 1 Temporary Events Notice in respect of **Flames Grill, 19 Havelock Road, Hastings, TN34 1BP. (Attached at Appendix A)**. This TEN was accepted in part only, for the 25th December 2021. The two additional dates were non - compliant with the Regulations.
3. On the 10th December 2021, Hastings Borough Council was served 2 further Temporary Event Notices in respect of the same premises. (Attached at Appendix B).
4. This premise holds a licence authorising the sale of late night refreshment, to operate until 02.00 hours from Monday to Wednesday, until 04:00hrs on Thursday to Saturday, until 02.00 hours on a Sunday, Non standard hours until 03.00 hours on a Sunday preceding a Bank Holiday Monday, under the Licensing Act 2003 (**Attached at Appendix B**), The premise is located within Area 2 (Hastings Town Centre) of the Council Special Saturation Policy (Cumulative Impact).
5. This premises licence was subject of a Review brought by Sussex Police in December 2019. In the licensing hearing which took place on the 13th February 2020, the sub committee imposed a number of conditions on to the premises licence to reduce the operating hours by one hour meaning they had to close from 03.00 hours. The premises licence holder appealed the decision and the matter was due in court on the 9th December 2021. On the 8th December 2021, a settlement was reached and the Hastings Borough Council allowed the reduction of hours that Security Industry Authority (SIA) authorised door supervisors, needed to be at the premises. This agreement allows SIA to start at 23.00 hours instead of 21.00 hours.

2.0 Application

6. The TEN applications request the following:
25th December 2021 03.00 hours until 05.00 hours on the same day,
27th December 2021 03.00 hours until 05.00 hours on the same day,
1st January 2022 03.00 hours until 05.00 hours on the same day,

3.0 Consultation

7. The Act provides for periods of notice and the number of events that may be held. Notice must be given to the Licensing Authority, Police and Environmental Protection ten working days before the beginning of the event period. The Police and Environmental Protection then have three working days to lodge objections with the Licensing Authority and Applicant.
8. A copy of the Police objection notice to the TEN, which was received on the 14th December 2021, is attached at **Appendix C**. Environmental Protection have not made any representations.
9. Objections must relate to the undermining of the licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm. This has been done.
10. Senior Licensing Officer Trevor Scrase has prepared a list of other Castle ward venues with late licences, including premises providing late night refreshment. This is attached in **Appendix D**.
11. A location plan of the premises is attached at Appendix E.

4.0 Legal Considerations

12. Part 5 of the 2003 Licensing Act provides a system of permitted temporary activities, under which licensable activities can be carried out on a temporary basis (for a period not exceeding 7 days) without the need for a premises licence or a club premises certificate.
13. If an objection notice to a temporary event notice is made by a responsible authority and no compromise can be reached between the parties, a hearing must be held.
14. Paragraph 7.28 of the Section 182 Guidance sets how the Authority should decide what actions are appropriate.
15. Sch 1, para 1(11) of the Licensing Act 2003 (Hearings) Regulations 2005 confirms the hearing has to take place within 7 working days of the end of the objections period (being 3 working days from service on the objector of the TEN as per section 104(3) of the 2003 Act). But a decision must be reached and the written notice of the decision served at least 24 hrs before the beginning of the event (as per Section 105(4)).
16. If the licensing authority receives an objection notice from the police or EHA that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection unless all parties agree that this is unnecessary. The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives.

17. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a “notice (statement of conditions)”) and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice.
18. 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.
19. All members of the Licensing Committee have previously been supplied with copies of the DCMS Government guidance and the Hastings Borough Council Statement of Licensing Policy.
20. 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 issue a counter notice there is a right of appeal.

Right of Appeal

Under the provisions of Section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Committee if the applicant is aggrieved at the outcome. Where the relevant licensing authority gives a counter notice, the premises user may appeal against that decision.

Where that authority decides not to give such a counter notice, the chief officer of the police or environmental health department of the local authority may appeal against that decision.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. Any appeal should be made to Hastings Magistrates Court, Bohemia Road, Hastings within 21 days from the notification of this decision but no appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins. You must contact the Magistrates Court to establish the formal procedure for the appeal.

5.0 Options

- Issue a Counter notice (refusal)

- Not issue a Counter notice (grant)
- Grant the TEN with conditions (as per existing conditions upon the licence)

Wards Affected

Castle Ward.

Policy Implications

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

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

Additional Information

Appendix A. Temporary Event notice.
Appendix B. Licence summary.
Appendix C. Sussex Police Section 104(2) LA2003 Letter of Objection.
Appendix D. List of closing times – Castle Ward late-night licensed venues
Appendix E. Location plan of premises.

Officer to Contact

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