

**Report to:** Licensing Sub-Committee.

**Date of Meeting:** 7<sup>th</sup> April 2022

**Report Title:** Variation of a premises licence with representations, Carib De L'Afrique, York Buildings, Wellington Place, Hastings.

**Report By:** Andrew Palmer, Assistant Director, Environment and Place.

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### **Purpose of Report**

To consider the application for a new premises licence as a result two representation received.  
Responsible Authorities. One.

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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 that 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 18<sup>th</sup> February 2022 Hastings Borough Council received an application to vary the premises licence of 'Carib De L'Afrique' made under section 34 of the Licensing Act 2003. (Attached at Appendix A).
3. The premises formally operated under a licence granted in 2017 operating as the 'Bombay Box'. A transfer to the current operation ( a restaurant specialising in Caribbean and African cuisine) was undertaken in 2019. A Map of the Area is attached at Appendix B.
4. This premise holds a licence under the Licensing Act 2003. The premise is located within Area 1A (Hastings Town Ctr) of the Council Special Saturation Policy (Cumulative Impact).
5. This existing premises licence covers the use of the premises for.
  - Late night refreshment                      Monday – Sunday                      23.00 – 00.00
  - Supply of alcohol                              Monday – Sunday                      10.00 – 23.45
  - The operating hours of the premises are   Monday – Sunday 10.00 – 00.00
6. The Special Saturation Policy (Cumulative Impact Policy) reviewed and extended in 2022 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. 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 applicant has made no mention in his application to vary, the cumulative impact policy or the designated matrix.

Applicants are advised to seek legal advice if making an application for a licence in a Special Saturation Area. It is for the applicant to address the Cumulative Impact Policy and produce evidence to demonstrate that the matter:

(a) Will not add to the cumulative impact caused by licensed premises and challenges already experienced in the area;

(b) Will not undermine the promotion of the Licensing Objectives.

7. In addition, at the 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 and reviewed in 2022. 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.
8. This matrix contained within the Statement of Licensing policy clearly shows that a Late opening “**Night Club type**” premises within a Saturation Area would only be acceptable with a closing time of **2 am** or a **Bar/Pub midnight**. Any applicant will need to demonstrate that the issue of such a licence will not cause problems to the area or add to any existing problems identified. This is in accord with the local policy details set out in paragraph 6 above.

## 2.0 Application

9. The application requests the following:
  10. To have Plays and Films, Monday to Sunday, 23.00hrs to 03.00hrs.
  11. To have Live Music, Recorded Music, Sunday to Monday 23.00hrs to 03:00hrs.
  12. To have Late night refreshment Monday to Sunday 23.00hrs to 02.30hrs.
  13. To extend supply of Alcohol for “On” sales on Monday to Sunday from 07.00hrs to 02.30hrs.
  14. To extend opening hours of the premises, Monday to Sunday from 07.00hrs to 03.00hrs.
  15. 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.

## 3.0 Consultation

16. 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.

17. 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.
18. As a result of this process two representation has been received from responsible authorities, one from Mr. Trevor Scrase, Snr Licensing officer HBC and Mr John Ballam, Environmental Protection officer relating to the Prevention of Crime and Disorder and Prevention of Public Nuisance.
19. Mr. Scrase comments on the application, the potential impact of another late-night vertical drinking establishment, with regulated entertainment until 03:00hrs, that there has been no submission regarding addressing issues within the Cumulative impact area or the Matrix. The Cumulative impact zone having been recently extended to take in Wellington Place due to a 49% rise in Public Place Violent Crime within the area. Mr Scrase has consulted with the applicant's agent Mr Gordon during the application and consultation period and expressed his concerns about the proposed hours and other areas of the application such as the planning consent and regulated entertainment. The applicant has failed to address these concerns re operating hours in line with the Matrix. I consider this a valid representation under the licensing objective (Prevention of Crime and Disorder and Public Nuisance) (Attached Appendix D.)
20. In addition, a letter has been received from Mr John Ballam an Environmental Health Officer from Hastings Borough Council. He comments on the application and the suggests a further noise condition under the prevention of public nuisance. I consider this also a valid representation under the licensing objectives in line with the Section 182 guidance. (Attached Appendix E).

#### **4.0 Legal Considerations**

21. 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.
22. 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.
23. 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.
24. 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.
25. 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

26. Grant the variation in full.

27. Grant part of the variation.

28. Grant the variation with additional or alternative conditions relevant to the application.

29. Refuse the application.

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### Wards Affected

Castle Ward.

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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	No
Anti-Poverty	No

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### Additional Information

Appendix A. Variation application.

Appendix B. Map of site.

Appendix C. Current licence.

Appendix D. Representation Licensing Authority

Appendix E. Representation Environmental Health

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**Officer to Contact**

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