

Date: March 2022

From: Trevor Scrase, Senior Licensing Officer

To: Ian Wheeler, Environmental Health & Licensing Manager.
Stewart Bryant, Senior EHP, Lead Licensing Officer.

Premises Licence - Full variation – Carib De L’Afrique, 2 York Buildings, Hastings, TN34 1NN.

On the 18th February 2022, an application for a full variation of the existing premises licence number HOP50562 was received from Simon Gordon, GPS Food Service Solutions, on behalf of the applicant Mr Adebayo Olujobi, for the above premises.

2 York Buildings was originally granted a premises licence on 27th November 2017, as Bombay Box, to Mr Parth Angre, trading as Nitara Ltd.

The premises licence was for a hot food premises with tables and chairs as a restaurant, for the:-

- supply of alcohol Monday to Sunday 10.00 – 23.45 hours,
- late night refreshment Monday to Sunday 23.00 until Midnight.
- hours open to the public Monday to Sunday 10.00 until Midnight.

On the 13th June 2019 an application for a transfer of the premises was received from Mr Adebayo Olujobi, trading as Carib De L’Afrique Ltd. Mr Parth Angre continued as the Designated Premises Supervisor under the new premises licence holder.

Mr Adebayo Olujobi is not the holder of a personal licence under the Licensing Act 2003. I understand that he intends to undertake the training required and apply for a personal licence, if this application is successful.

The premises licence authorises:-

LATE NIGHT REFRESHMENT	MONDAY – SUNDAY	23.00 – 00.00
SUPPLY OF ALCOHOL	MONDAY – SUNDAY	10.00 – 23.45

The hours open to the public are:-

The opening hours of the premises

MONDAY – SUNDAY	10.00 – 00.00
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A copy of the premises licence is attached.

York Buildings, Wellington Place, Hastings has a variety of commercial business premises along its length from Queens Road to Albert Road.

Amongst those are the following food related businesses:-

Costa Coffee, 14 – 15 York Buildings.

Café Club, 11.

Fish Bowl, 6 – 7.
KFC Express, 4 – 5.
Carib De L'Afrique, 2.

Currently only Fish Bowl, operating as a fish and chip restaurant and Carib De L'Afrique are licensed for the on sales consumption of alcohol.

Food City, 3 York Buildings is an off licence / basic convenience store.

KFC Express has authorisation for late night refreshment until Midnight.

McDonalds located on the opposite side of Wellington Place is not authorised for late night refreshment and closes at 23.00 hours.

There is an existing off licence at 3 York Buildings closing at 23.00 hours, with another approximately 200 metres east at 3 Breeds Place, Seaview Market.

There are two floors of residential flats, immediately above Carib De L'Afrique and Kamsons Pharmacy next door. These were converted from a language school.

Mr Olujobi has asked for advice before regarding changing the style of his premises to become more of a bar and has been advised that he should seek the advice of planning regarding change of use from a café / restaurant to a drinking establishment before submitting any variation to the premises licence. I understand he has not done this. A response has been received from HBC Planning and is attached.

The full variation is applying ' To extend regulated entertainment hours, sale of alcohol hours and opening times' and 'to open up and licence the basement area.'

It is not shown if the supply of alcohol will remain as currently, for consumption on the premises only or if the intention is to be authorised for the supply of alcohol for consumption both on and off the premises.

At present no regulated entertainment is authorised on the premises licence. However due to de-regulation of the Licensing Act 2003 in 2015, recorded music is no longer required to be licensed under the 'Act' as background music, or for being played between 08.00 until 23.00 hours daily. However the playing of recorded music is required to be licensed under the PPL PRS Licence. Under the PPL PRS Licence this allows a business to legally play and perform music in their business, whether through radio, TV, or other devices and or live performances.

This is not a local authority licence but an independent licence regime by the music industry.

Under the Live Music Act 2012 there is an exemption for a premises licenced for the sale of alcohol for consumption on the premises, to be allowed to have 'live music' between 08.00 to 23.00 hours daily.

In respect of other regulated entertainment under the LA2003, most are de-regulated between 08.00 to 23.00 hours daily, subject to capacity limits and only require authorisation on the premises licence from 23.00 hours onwards.

In this application the hours for Plays, Films, Live Music, Recorded Music, Performance of dance, are applied for from 23.00 hours until 03.00 hours.

Late night refreshment requires authorisation on a premises licence for the sale and consumption of hot food on or from a premises from 23.00 hours until 05.00 hours. In this application it is applied for from 23.00 until 03.00 hours.

The hours for the Supply of alcohol is being increased from 23.45 hours until 02.30 hours. This provides a 'drinking up time' of 30 minutes before the applicant closes the premises.

The hours open to the public are being increased from Monday to Sunday 10.00 hours until Midnight on the current premises licence, to Monday to Sunday 07.00 until 03.00 hours.

There is a bar shown on the plan for the basement as well as a small stage area. It is not stated if these are fixed structures or moveable. In the basement, although tables and chairs are shown on the plan, it appears to be intended for alcohol consumption and regulated entertainment until the terminal hour of 02.30 for alcohol sales and 03.00 hours for live, recorded music and performance of dance. There is no indication of the dance being of an 'adult entertainment nature.' The tables and chairs although shown on the plan, do not need to be shown unless permanently fixed to the floor. In this instance they are shown as an example but will in all probability be stacked or placed around the basement for live music, or recorded music to allow dancing of customers. Dancing or the provision of facilities for dancing is no longer licensable. This will encourage 'vertical drinking' and operation as a bar with consumption of alcohol on the premises.

There is no confirmation in the application that food will be available throughout the extended hours of operation.

The capacity of the basement area is not given in the application, nor is this required. The capacity of the premises is directly related to the floor area and available means of exit in the fire safety risk assessment as required under the Regulatory Reform (Fire Safety) Order 2005. Licensing are not required to be sent a copy of the fire safety risk assessment as we no longer limit the capacity in any licensed premises under the Licensing Act 2003.

There are a number of issues which are not explained sufficiently in the application.

The first is that at the time of submission of this application, no change of use had been submitted to planning for the use of the basement area and the extended hours.

The intention of the applicant appears to be to change from a ground floor seated restaurant with on sales of alcohol to diners only, to the addition of the as yet unconverted basement area, to create a late night entertainment venue with bar. Should the premises licence application be successful then a planning change of use will be submitted before the necessary building works are carried out

Conditions under the four licensing objectives have been offered by the applicant through Mr Gordon. These can be seen in the application attached.

In communication with Mr Gordon it appears the applicant is hoping to create a restaurant and bar premises. Tables and chairs will remain in the existing ground floor premises, as currently, with tables and chairs in the proposed basement area, with a new staircase installed to provide access to the basement.

Police Licensing have not made any formal representation against this full variation application.

Fire Safety have visited and inspected the premises but are unable to respond in full as the necessary building alterations have not been made. Any alterations will be subject to building regulations including fire safety requirements and the capacity of the premises ground floor and basement subject of the fire safety risk assessment. Fire safety would deal with any issues arising under their own legislation, should it be necessary.

John Ballam, Environmental Health, Noise Pollution Officer has responded, with his concerns and requesting additional conditions under the Prevention of public nuisance. Report attached.

The Statement of Licensing Policy has recently been reviewed and amended with effect from the 10th February 2022. I understand the applicant's attention has been drawn to this by Mr Gordon.

In the licensing policy the cumulative impact area for Hastings town centre has been increased to include York Buildings / Wellington Place along its entire length from Harold Place to Albert Road. The policy states- *This does not prevent any person making an application for a licence within the designated area.*

Responsible authorities must note that the licensing authority can only give effect to the Cumulative Impact Policy in respect of any application for a premises within the cumulative impact areas if a relevant representation is received.

No reference has been made to the licensing policy or cumulative impact policy in this full variation application.

The matrix (on pages 4 & 5 of the Licensing Policy,) gives examples to applicants that:-

In a cumulative impact area:-

Restaurant would be acceptable until Midnight,

Late night takeaways would not be acceptable.
Night club until 2am,. (there is no reference to a night club in the LA2003).
Public house until midnight.

The licensing authority is a responsible authority under the Licensing Act 2003 and in that respect I make such a representation against this application.

My representation is based on the Licensing Policy in respect of the cumulative impact area now including York Buildings, Wellington Place and the hours being applied for in conflict with the 'matrix'.

My representation against the application is directed to the authorised use of the premises as a bar with the potential for 'vertical drinking and regulated entertainment until 03.00 hours.

This particular part of the town centre, now under the cumulative impact policy, is currently occupied by daytime to evening cafés and restaurants, the latest of which at present is KFC Express authorised for late night refreshment until Midnight.

The application for Plays, films and performance of dance, should not be granted.

Dancing or the provision of facilities for dancing, on a cleared floor space area is no longer licensable under de-regulation.

Live music and recorded music to cease at 23.45 hours, with alcohol sales, the premises to close at midnight.

Hot food should be available if this is to be a food premises throughout the opening hours, ceasing at the same time as all regulated entertainment and alcohol sales.

The conditions requested Environmental Health to be applied.

Trevor Scrase
Senior Licensing Officer