

Report to: Licensing Sub-Committee.

Date of Meeting: 15th June 2022

Report Title: Variation of a premises licence with representations, The Forbidden Fruit, 22 Grand Parade, St Leonards on Sea

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

Purpose of Report

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

Recommendation(s)

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

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 21st April 2022 Hastings Borough Council received an application to vary the premises licence of 'The Forbidden Fruit made under section 34 of the Licensing Act 2003. (Attached at Appendix A). The premises proposes to extend its operation into the basement area and make changes to the current hours of operation.
3. The premises formally operated under a licence granted in 2005 operating under sever different operators. A transfer to the current operation was undertaken in 2021. A Map of the Area is attached at Appendix B.
4. This premise holds a licence under the Licensing Act 2003. The premise is not located within the Council Special Saturation Policy (Cumulative Impact Zones).
5. This existing premises licence covers the use of the premises for.

The times the licence authorises the carrying out of licensable activities

FILMS:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
LIVE MUSIC:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
RECORDED MUSIC:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
PERFORM DANCE:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
DJ PERFORMANCE:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
DANCING:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00
LATE NIGHT REF:	SUNDAY-WEDNESDAY:	23:00-00:30	THURSDAY-SATURDAY:	23:00-01:30
SUPPLY OF ALCOHOL:	SUNDAY-WEDNESDAY:	10:00-01:00	THURSDAY-SATURDAY:	10:00-02:00

6. The opening hours of the premises

SUNDAY-WEDNESDAY: 10:00-01:30

THURSDAY-SATURDAY: 10:00-02:30

7. 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 identifies that a pub type premises within a mixed commercial / residential area would normally be granted a licence until midnight (11pm if live music required).
9. The premises currently has a terminal hour of 01:30hrs Sunday to Weds, and 02:30hrs Thursday to Saturday.

10. 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 8 above.

2.0 Application

11. The application requests the following:

To have Plays and Films,

Mon to Wed 10.00hrs to 01.00 Thurs to Fri 10:00 to 02:00hrs Fri to Sun 09:00 to 02:00hrs

To have Live Music, Recorded Music,

Mon to Wed 10.00hrs to 01.00 Thurs to Fri 10:00 to 02:00hrs Fri to Sun 09:00 to 02:00hrs

To have Late night refreshment

Mon to Wed 23.00hrs to 01.00 Thurs to Sun 23.00hrs to 02.00hrs

To extend supply of Alcohol for sales On and Off the Premises

Mon to Wed 10.00hrs to 01.00 Thurs to Fri 10:00 to 02:00hrs Fri to Sun 09:00 to 02:00hrs

Performance of Dance

Mon to Wed 10.00hrs to 01.00 Thurs to Fri 10:00 to 02:00hrs Fri to Sun 09:00 to 02:00hrs

To extend opening hours of the premises

Mon to Wed 10.00hrs to 01.30 Thurs to Fri 10:00 to 02:30hrs Fri to Sun 09:00 to 02:30hrs

To add non-standard timings for all activiites

Christmas Eve and New Years Eve 10:00 – 03:00 hrs

As part of this variation the applicant wishes to extend the licensable area into the basement.

12. 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

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 responsible authorities, Mr John Ballam, Environmental Protection officer relating to the Prevention of Crime and Disorder, and Prevention of Public Nuisance. He comments on the application and the suggests a change of wording on the main noise prevention condition and a further noise condition under the prevention of public nuisance. I consider this a valid representation under the licensing objectives in line with the Section 182 guidance. (Attached Appendix D).
16. The noise team have also received a recent noise complaint relating to the premises which is now under investigation.
17. Mr. Ballam has consulted with the applicant regarding these conditions; however, these have not been accepted by the application.

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.

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

23. Grant the variation in full.
24. Grant part of the variation.
25. Grant the variation with additional or alternative conditions relevant to the application.

26. Refuse the application.

Wards Affected

Central St Leonards Ward.

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

Additional Information

Appendix A. Variation application.
Appendix B. Map of site.
Appendix C. Current licence.
Appendix D. Representation Environmental Health
Appendix E Representations from the Public x5

Officer to Contact

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