

Report to: Licensing Sub-Committee.

Date of Meeting: 7th July 2022

Report Title: Variation of a premises licence with representations, Flames Grill,
Havelock Rd, Hastings.

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. Two.

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. The 2003 Licensing Act covers the licensing of individuals for the retail sale of alcohol (personal licences), the licensing of premises for the retail sale of alcohol, the provision of regulated entertainment or late-night refreshment (premises licences), the supply of alcohol or the provision of regulated entertainment to certain clubs (club premises certificates) and the permitting of certain licensable activities on a temporary basis (temporary event notices).
2. Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e., the premises and its vicinity. Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.
3. On the 18th February 2022 Hastings Borough Council received an application to vary the premises licence of 'Flames Grill' made under section 34 of the Licensing Act 2003. (Attached at Appendix A).
4. The premises formally operated under a licence granted in 2006 operating as the Kebab Kingdom. A transfer to the current operation (hot food takeaway) was undertaken in 2011. A Map of the Area is attached at Appendix B.
5. The full variation is 'applying' to extend late night refreshment and opening times'.
6. At present no regulated entertainment is authorised on the premises licence and the premises is not licensed to serve alcohol.
7. 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 04.00 hours.
8. 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).
9. This existing premises licence covers the use of the premises for.

Late night refreshment:

SUNDAY – WEDNESDAY 23.00 – 02.00

THURSDAY – SATURDAY 23.00 – 03.00

SUNDAY PRECEDING A B/H MONDAY 23.00 – 03.00

The operating hours of the premises are:

SUNDAY – WEDNESDAY 17.00 – 02.00

THURSDAY - SATURDAY 17.00 – 03.00

SUNDAY PRECEDING B/H MONDAY UNTIL 17.00 – 03.00

10. The Special Saturation Policy (Cumulative Impact Policy) was reviewed and extended in 2022 and is contained within the Council's Licensing Policy.
11. It states the authority will make decisions on applications within the CIP on a case-by-case basis with a view on how best to promote the licensing objectives. It also does not remove the requirement for relevant representation to be submitted by a responsible authority or a member of the public (defined as 'any other person' within the act) against an application for it to be considered by the Licensing subcommittee.
12. Therefore, 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 a hearing will be held.
13. 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.
14. 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.
15. 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.

16. This matrix contained within the Statement of Licensing policy clearly shows that an application for a 'Late night takeaway' premises within a Saturation Area would not be acceptable. 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 above.
17. Applicants will have to demonstrate that their application and proposed operation is not inconsistent with the Authority's licensing policy, this assessment and the authority's ability to be able to promote the licensing objectives. It is for the applicant to demonstrate that their application would not add to the cumulative impact of such licensed premises in the area.
18. An applicant wishing to obtain a new or varied licence for premises falling within any of the cumulative impact areas must identify, through the risk assessment process and operating schedule, the steps that he or she intends to take so that the council and responsible authorities can be satisfied that granting a new licence will not add to the impact already being experienced.
19. The applicant has made no mention in his application to vary, either the cumulative impact policy that the premises sits within or the designated matrix.
20. On the 18th December 2019 a request to submit a review of the premises licence was given to Hastings Borough Council by: - District Commander, Chief Inspector, Hastings Police Station, Bohemia Road, Hastings.

Under the licensing objectives, "the Prevention of Crime and Disorder" and "Public safety".

21. The review referred to eleven incidents, which took place between March 2019 and November 2019, involving staff and customers fighting. These fights had occurred both inside and outside the premises, where assaults have been committed and injuries sustained.
22. At the premises licence review on the 12th February 2020, the following conditions were sanctioned by the licensing committee to be applied to the licence:
23. *CCTV: Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises license is in operation.*

The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.

CCTV footage will be stored for a minimum of 28 days.

The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected and alleged crime.

The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.

Subject to Data Protection guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk for the police without difficulty or delay and without charge to Sussex Police.

Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.

Two SIA registered door staff will be employed at the premises from 21.00 until half an hour after the premises has closed on Thursday, Friday and Saturday's plus Bank Holidays, New Year's Eve, public holidays and at any time when a temporary event notice is in operation.

An incident report will be kept and maintained at the premises and made available for inspection by police officers and local authority officers on request. This book shall be solely used for the purpose of recording incidents.

A refusal register will be kept and maintained at the premises and made available for inspection by police licensing officers and local authority officers on request.

The opening hours of the premises to be;

Sunday to Wednesday 17.00 to 02.00hrs, Thursday to Saturday 17.00 to 03.00hrs Sunday preceding a BH Monday 17.00 to 03.00hrs

Late night refreshment hours to be;

Sunday to Wednesday 23.00 to 02.00hrs. Thursday to Saturday 23.00 to 03.00hrs, Sunday preceding a BH Monday 23.00 to 03.00hrs

24. This decision was appealed by the applicant in the Magistrates court on the 4th March 2020
25. On the 8th December 2021 a consent order was granted by the court and is included within the Premises licence (Appendix B) listing the conditions to be applied to the licence.

2.0 Application

26. The application requests the following:
27. To have Late night refreshment Thursday to Saturday from 23.00hrs to 04.00hrs and on a Sunday preceding a Bank Holiday Monday from 23.00hrs to 04.00hrs.

28. To extend opening hours of the premises, Thursday to Saturday from 23.00hrs to 04.00hrs and on a Sunday preceding a Bank Holiday Monday from 23.00hrs to 04.00hrs.
29. 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

30. 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.
31. 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.
32. As a result of this process two representation has been received from responsible authorities, one from Sussex Police and one from Mrs. Claire Worth, Licensing officer HBC relating to the Prevention of Crime and Disorder and Prevention of Public Nuisance.
33. Mrs Rolfe, Sussex Police, licensing officer comments on the application and states:

Hastings Borough Council has applied a Cumulative Impact Policy (CIP) within parts of Hastings Town. The entire length of Havelock Road is within the CIP. Whilst the applicant has stated they will extend their conditions on the licence they currently have, they have not addressed the fact that the premises is within the CIP and how by increasing their hours will not have a negative impact on one or more of the four licensing objectives. Between Havelock Road and Robertson's Street there are approximately 5 popular premises that close at 0300hrs. This makes 0300 hours a very busy time for dispersal of customers. Allowing this premises to increase the hours at a very busy time of night will highly likely have an impact on Crime and disorder and public nuisance, as we have seen in the past and is the reason why the hours were reduced at a hearing.

Sussex Police reviewed the premises licence for this premises in December 2019 and the hearing took place on 13th February 2020. On 13th February 2020 the Licensing Sub Committee decided to impose a number of conditions on to the premises licence and to reduce the operating hours by one hour meaning they had to close from 0300hrs. The premises appealed the decision,

and the matter was due in court on 9th December 2021. On the 8th December 2021, a settlement was reached, and the Local authority allowed the reduction of hours SIA needed to be at the premises. The agreement was to allow SIA to be at the premises from 2300hrs as opposed to 2100hrs.

We feel that crime and disorder caused by people congregating in and around the premises has reduced because they are required to close from 0300 hours. This premises has had a number of temporary event notices (TENs) granted this year which allowed them to open until 0400 hours. TENs are not permanent, and the premises can only have a set amount each year. (Attached Appendix D.)

34. Mrs. Worth comments on the application that based on the Licensing Policy in respect of the cumulative impact area now including York Buildings, Wellington Place, Havelock Road and Queens Road the hours being applied for are in conflict with the 'matrix' which states late night takeaways would not be acceptable in this location. No submission regarding addressing issues within the Cumulative impact area or the Matrix have been made in the application. The Cumulative impact zone having been reviewed and extended following a 49% rise in Public Place Violent Crime within the Cumulative area during 2020-21. (Attached Appendix E.)
35. I consider both a valid representation under the licensing objective (Prevention of Crime and Disorder and Public Nuisance)

4.0 Legal Considerations

36. 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.
37. 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.
38. 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.
39. 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.
40. 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

41. Grant the variation in full.
42. Grant part of the variation.
43. Grant the variation with additional or alternative conditions relevant to the application.
44. Refuse the application.

Wards Affected

Castle 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 Sussex Police
- Appendix E. Representation Licensing Authority

Officer to Contact

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