

## Application to vary a Premises Licence – Licensing Act 2003

REPORT OF: Tom Clark, Head of Regulatory Services

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Wards Affected: East Grinstead  
Key Decision: No  
Report To: Liquor Licensing Panel

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### Purpose of Report

- 1 To provide information in order that the Committee can determine an application to vary a Premises Licence.

### Summary

- 2 An application, pursuant to Section 34 Licensing Act 2003, has been made by Mr Hassan Nafi Hassan to vary a Premises Licence at The Crab and Beacon, The Atrium, King Street, East Grinstead, West Sussex, RH19 3DJ. Representations against the application have been made by a Responsible Authority.
  - 3 The Committee is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
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### Background

- 4 The Crab and Beacon is situated within the Atrium complex in King Street, East Grinstead and occupies the first floor. It has previously traded under the name of The Crows Nest.
- 5 It has been trading for a number of years and was issued with a Premises licence by this Council in 2005 when the previous Justice Licence 'On' Licence was converted under the Licensing Act 2003.
- 6 It is currently licensed for the following licensable activities;

Licensable Activity	Timings
A performance of dance - Indoors	Sunday 12:00 - 23:30 Monday to Wednesday 11:00 - 23:00 Thursday to Saturday 11:00 - 01:30
Provision of facilities for dancing - Indoors	As Above

A performance of live music - Indoors	As Above
Provision of Ent. Fac. similar to music/dance - Indoors	As Above
Entertainment similar to dancing/making music - Indoors	As Above
An indoor sporting event - Indoors	As Above
Sale by retail of alcohol	As Above
Any playing of recorded music - Indoors	Sunday 12:00 - 00:00 Monday to Wednesday 11:00 - 23:30 Thursday to Saturday 11:00 - 02:00

7 The current opening hours of the premises are:

**Monday to Wednesday** 11:00 - 23:30  
**Thursday to Saturday** 11:00 - 02:00  
**Sunday** 12:00 - 00:00

8 I have appended the full conditions currently attached to this licence to the rear of the report.

In brief they include the following conditions which were attached to the licence after a previous hearing of the Licensing Committee:

- a. All windows and doors to be kept closed when amplified music is played.
- b. A noise limitation device shall be installed
- c. Notices shall be displayed requesting customers to leave quietly
- d. Provision of CCTV
- e. Staff Training
- f. Staff sale of alcohol having DPS written authorisation
- g. SIA Door Staff to be present every Thursday, Friday and Saturday from 2000hrs to 30 minutes after closure
- h. Maintain a refusals log
- i. Use of plastic/toughened glass containers and no removal of containers from the premises

9 These conditions were added to the Premises Licence by the Committee following a review of the Licence that was called for by the Police on the 1<sup>st</sup> November 2011. I have attached a copy of the review application to the report.

- 10 On the 5<sup>th</sup> November 2020 Mr Hassan submitted an application for a minor variation to vary the current premises licence. His intention is to re-purpose the location to be predominately restaurant based and to reduce the licensable hours. This application was as follows:
- a. To adjust the premises plan to reflect the new internal layout of the premises.
  - b. Reduce the licensable hours to terminate the sale of alcohol at 23:30 hours each night and late-night refreshment to 00:00 hours each night (terminating 0100 hours into Christmas Day and New Years Day)
  - c. Removal of Premises Licence conditions relating to the provision of door staff
- 11 The Police made representations in respect of this minor variation application and it was therefore refused.
- 12 On the 25<sup>th</sup> November 2020 Mr Hassan re-submitted this application as a full variation of the Premises Licence. He is requesting the same proposed variations as specified in the Minor Variation application.
- 13 Should the Committee grant the variation of the licence and the removal of the conditions in respect of door staff, the Police have requested that a number of conditions detailed in the appendices to this report be included in respect of their representations.

## **Representations**

- 14 Representations have been received from the Police in respect of the removal of the Premises Licence condition in respect of the provision of SIA door staff. Their detailed representations are attached in the appendices.

In brief the Police have expressed their concerns that the premises will not be operating solely as a restaurant with alcohol only being served to customers sitting down and partaking of a 'sit down meal'. In correspondence with Mr Hassan he confirmed that customers would still be able to stand at the bar and watch and partake in sports (Pool and darts). Therefore the Police considered that, while a 'restaurant area' may be provided and the operating hours reduced; the premises would never the less continue to function as a 'sports' bar, operating well into the hours of the night time economy, in the centre of East Grinstead. Sussex Police could therefore not endorse the removal of the condition in respect of the provision of door staff.

The Police have also referenced recent breaches of the current Premises Licence conditions and Covid19 Restrictions. These relate to a visit to the premises by Police after 2200 hours on the 30<sup>th</sup> October 2020. The Covid19 regulations at that time stated that the premises should be closed to the public at 2200 hours. It was found to be open and this matter was subsequently discharged by a Fixed Penalty Notice.

A subsequent visit by the Licensing Officer found a number of other issues in respect of the Premises Licence conditions which have since been rectified in a re-inspection.

The Police have also brought to the attention of the Licensing Department of a check the Police completed at 22:15 hours on Friday 18<sup>th</sup> December 2020 when there were no SIA door staff present at the location.

- 15 The consultation period took place between 25<sup>th</sup> November and 23<sup>rd</sup> December 2020. It was correctly advertised at the site during this period and in the Mid Sussex Times 3<sup>rd</sup> December 2020

## **Policy Context**

- 16 Determination of Application for a Premises Licence

The Committee must determine the application in accordance with the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

- 17 Section 34 LA03 deals with the determination of the application:

Grant of premises licence

34 Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

- (a) receives an application, made in accordance with section 34, to vary a premises licence, and
- (b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3) and section 36(6) the authority must grant the application.

(3) Where relevant representations are made, the authority must—

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

(4) The steps are—

- (a) to modify the conditions of the licence;
- (b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) In this section, "relevant representations" means representations which—

(a) are about the likely effect of the grant of the application on the promotion of the licensing objectives and

(b) meet the requirements of subsection (6),

(6) The requirements of are—

(a) that the representations were made by [a responsible authority or other person] within the period prescribed under section 17(5)(c) by virtue of Section 34(5)

(b) that they have not been withdrawn, and

(c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

## 18 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

19 A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant - (ie more probable than not)

## **Other Options Considered**

20 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence. .

## **Financial Implications**

21 The final decision made by the Committee in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

## **Other Material Implications**

22 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.

23 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

## **Background Papers**

- Appendix 1 – Application Form and new plan of premises
- Appendix 2 – Current Licence Conditions
- Appendix 3 – Photos of Location
- Appendix 4 – Application for review dated 1<sup>st</sup> November 2011

## **Representations**

- Appendix 5 – Police representation and associated emails
- Appendix 6 – Letters relating to Licencing Team Inspection

## **Other Documents**

- Appendix 7 – Police requested conditions if SIA door staff removed