

Cheltenham Borough Council

Licensing Sub Committee – 14 August 2015

Licensing Act 2003: Determination of Application for a Premises Licence

Cotswold Kebab, 59 High Street, Cheltenham

Report of the Senior Licensing Officer

1. Introduction

- 1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence at any time. In this case, an application was made to vary the Premises Licence was received on 22 June 2015 from Mr Adrian Godsell, in respect of Cotswold Kebab, 59 High Street, Cheltenham. A copy of the application is attached at **Appendix A**.
- 1.2 The original application for a Premises Licence was originally granted on 24 November 2005.
- 1.3 The current Licensable hours for the sale of alcohol is 24 hours a day off sales only
- 1.4 However this is limited by conditions from the Police from the original application:
***Except for deliveries, Alcohol to be sold only with Food.
No 'Over-the-Counter' off-sales of Alcohol to take place between 2300hrs - 0600hrs.***
- 1.5 The application being made is to amend the Sale of Alcohol Hours to 12:00 – 06:00 Hrs. for on Sales only.
- 1.6 Subsequent to the application being made and in light of comments received by Chief Officer of the Police the applicant amended the sale of Alcohol to Off sales only which leaves him with less hours than he currently has and still has the conditions.
- 1.7 **appendix B** shows the location of the premises and the surrounding area.
- 1.8 **Implications**
 - 1.8.1 Financial **Contact officer: Sarah Didcote
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- 1.8.2 Legal A sub-committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.
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2. Application (Ref. 15/00906/PRMV)

- 2.1 Applicant: Mr Adrian Godsell
- 2.2 Premises: Cotswold Kebab, 59 High Street, Cheltenham, GL50 1DU
- 2.3 The applicant has identified a number of steps that they will take to promote the licensing objectives. These steps are listed at section **P** of the application form, which is attached at **appendix A**. If the premises licence is granted it will be subject to conditions consistent with these steps, as well as such mandatory conditions as may be applicable under the Act.

3. Responsible Authorities

- 3.1 The Act identifies 9 responsible authorities as statutory consultees for applications for premises licences. Those consultees are:
- the relevant licensing authority (Cheltenham Borough Council);
 - the chief officer of police;
 - the local fire and rescue authority;
 - the relevant health and safety enforcing authority;
 - the local authority with responsibility for environmental health;
 - the local planning authority;
 - the body with responsibility for the protection of children from harm;
 - the local director of public health;
 - the local trading standards authority.
- 3.2 The only representation was from the Chief Officer of the Police who has objected on the grounds of Crime and Disorder. A Copy of this is attached as **Appendix C**
- 3.3 The Police have tried to liaise with the applicant and would be happy for them to serve till midnight but not later, this has not been accepted or confirmed with the applicant.

4. Other People

- 4.1 No Representations were received.

5. Local Policy Considerations

- 5.1 The 2003 Act introduces a unified system of regulation through two new types of licences: the premises licence (club premises certificates for qualifying

clubs) and the personal licence. The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities': public entertainment, theatre, cinema, or late night refreshment.

- 5.2 The system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.
- 5.3 The Council's adopted licensing policy statement (Council 10th Feb 2012) includes the following:
- 5.4 The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the Council will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the Council over the next three years. It will also inform elected Members of the parameters within which licensing decisions can be made. (Paragraph 1.3)
- 5.5 Through this policy the Council hopes that residents of and visitors to Cheltenham will be able to enjoy their leisure time safely and without fear of violence, intimidation or disorder while at licensed premises. (Paragraph 1.4)
- 5.6 An effective licensing policy, alongside other initiatives, will work towards promoting the positive aspects of deregulation under the Act, such as promoting tourism, increasing leisure provision and encouraging the regeneration of the town centre as well as controlling the negative impacts such as increase in noise, nuisance, anti-social behaviour and crime and disorder. (Paragraph 1.5)
- 5.7 It should be understood that this policy and the section 182 Guidance cannot anticipate every scenario or set of circumstances that may arise and as such there may be circumstances where the policy or guidance may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the Council will give full reasons for departing from this policy. (Paragraph 1.6)
- 5.8 The Council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which are:-
 - (a) The prevention of crime and disorder;
 - (b) Public safety;
 - (c) The prevention of public nuisance; and
 - (d) The protection of children from harm. (Paragraph 4.1)
- 5.9 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (Paragraph 4.2)
- 5.10 In determining a licensing application, the overriding principle adopted by the Council will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those appropriate to promote the licensing objectives will be imposed. (Paragraph 4.3)

- 5.11 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (Paragraph 4.5)
- 5.12 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.13 The operating schedule is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. (Paragraph 5.4)
- 5.14 Applicants will be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises. (Paragraph 5.6)
- 5.15 The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. For premises such as a public house where public entertainment is not provided, only a relatively simple document will be required. For a major public entertainment venue it will be expected that issues such as public safety and crime and disorder will be addressed in detail. (Paragraph 5.7)

Crime and disorder

- 5.16 The promotion of the licensing objective to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective. (Paragraph 5.11)
- 5.17 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events. (Paragraph 5.12)
- 5.18 When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include (a) Underage drinking; (b) Drunkenness on premises; (c) Public drunkenness; (d) Drugs; (e) Violent behaviour; and (f) Anti-social behaviour. (Paragraph 5.13)
- 5.19 Where relevant representations are received the Council may impose appropriate conditions on premises licences and club premises certificates. Appropriate conditions include:-
- (a) adoption of a 'Challenge 21 or Challenge 25' policy;
 - (b) adoption of best practice guidance including our voluntary code of practice for Reducing Alcohol Related Violence (RARV);
 - (c) agreeing a prescribed capacity for the premises;
 - (d) requirements for an appropriate ratio of tables and chairs to customers, based on capacity, and for areas to be allocated permanently for seated

- customers in order to prevent overcrowding, which can lead to disorder and violence;
- (e) a requirement for Security Industry Authority registered door supervisors to control numbers of persons entering the premises and to deny entry to individuals who appear drunk, disorderly or intent on crime;
 - (f) requirements that drinking vessels be made of toughened glass or plastic or other materials that do not form a sharp edge when broken, and that glass bottles are not passed to customers. This may be a particular concern if drinks are to be consumed outside premises;
 - (g) restrictions on drinking in areas within and outside the premises;
 - (h) limitations on the types of promotions of alcoholic drinks, so as not to encourage excessive drinking, or drunkenness;
 - (i) the maintenance of good order by the management, particularly where alcohol is supplied for consumption and where large numbers of people are admitted;
 - (j) dedicated communications networks between management teams, local police and other licensed premises to provide early warning of disorder;
 - (k) warning signs about crime prevention measures;
 - (l) clear policies and measures to prevent weapons or illegal drugs being brought onto the premises and measures to discourage the use of illegal drugs; and/or
 - (m) the installation and maintenance of appropriately sited closed circuit television cameras (CCTV) to be operational during the period of the licence, and other appropriate times both inside and immediately outside the premises which can provide images of a suitable quality for use as evidence. (Paragraphs 5.15-5.16)

6. National Guidance

- 6.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003 (guidance updated March 2015). The committee must have regard to the guidance when determining this application. Below are relevant extracts for the benefit of the committee. Emphasis added.

Licensing objectives and aims

- 6.2 The legislation provides a clear focus on the promotion of four statutory objectives *which must be addressed when licensing functions are undertaken*. (1.2)
- 6.3 The licensing objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm. (1.3)
- 6.4 *Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.* (1.4)

6.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them. (1.5)

Legal status

6.6 *Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent.* However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (1.9)

Licence conditions – general principles

6.7 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate *for the promotion of the licensing objectives*;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;

- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format. (1.16)

Each application on its own merits

- 6.8 *Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (1.17)*

Crime and disorder

- 6.9 Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. (Paragraph 2.3)

7. Licensing Comments

- 7.1 When determining this application the sub-committee must have regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence it hears. In particular, the sub-committee must seek to promote the four licensing objectives when determining the application. The four licensing objectives are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.
- 7.2 The role of the licensing authority is to ensure the promotion of the licensing objectives and, in so doing, to maintain an appropriate balance between the legitimate aspirations of applicants and the needs of residents and other users of the town.

- 7.3 The sub-committee, having full regard to the steps the applicants have proposed in their operating schedule as well as the relevant representations received, must take such steps as it considers appropriate for the promotion of the licensing objectives.
- 7.4 Having considered all relevant issues, the sub-committee may:
- Grant the application subject to such conditions as are consistent with the operating schedule, and any additional conditions that the sub-committee considers appropriate for the promotion of the licensing objectives; or
 - Refuse all or part of the application.

Background Papers

Service Records

Licensing Act 2003

Revised Guidance issued under section 182 of the Licensing Act 2003

Cheltenham Borough Council's Statement of Licensing Policy

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