

Cheltenham Borough Council

Licensing Sub Committee – 16 November 2012

Licensing Act 2003: Determination of Application for a Premises Licence

Express Kebab 210 Hewlett Road, Cheltenham, Gloucestershire, GL52 6UQ

Report of the Licensing Officer

1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence or a variation of an existing premises licence at any time. In this case, an application was received on 01 October 2012 from Mr Hamit Yilmaz in respect of Express Kebab, 210 Hewlett Road, Cheltenham, Gloucestershire, GL52 6UQ. Copies of the application form and the internal plan of the premises are included at **Appendix A**.

1.2 The applicant has applied for a premises licence for the following licensable activities at the dates and times shown:

Provision of late night refreshment Every Day 23:00 – 00:00

1.3 If this application is approved a premises licence will be issued.

1.4 Implications

1.4.1 Financial

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1.4.2 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. 12/01623/PRMA)

2.1 Applicant: Mr Hamit Yilmaz

2.2 Agent: Mike Smith & Co

2.3 Premises: Express Kebab, 210 Hewlett Road, Cheltenham, Gloucestershire, GL52 6UQ

2.4 Steps to promote the four licensing objectives that are identified in this application:

The applicant has stated that he intends to take the following steps:

- All staff will be trained as required to ensure the premises are operated safely and in accordance with relevant legislation

- Installation and maintenance of a CCTV system including retention of recorded images for 31 days and making images available to the relevant statutory authorities on reasonable request being made.
- When the premises are open for business, staff will regularly check the immediate exterior of the premises and clear any litter emanating therefrom. Litter bins will be provided for the use of patrons.
- Signs will be displayed at the entrance / exit of the premises requesting patrons to respect the rights of local individuals.

3. Responsible Authorities

3.1 **Gloucestershire Constabulary** have not objected to the application, but they have asked for additional CCTV specifications, which the applicant has agreed and which will be specified as a condition on the licence if it is granted. The additional measures are as follows:

Within three months of the determination of the Premises Licence the licence holder must install a CCTV system to the following specification:

- System: HD SDi system incorporating 4 x 2.1 megapixel colour cameras, each with 12 - 25 frames-per-second (real time equivalent) recording. System to incorporate movement-detection so that cameras go into standby when no movement is detected.
- Camera layout: 2 cameras overlooking the external approaches to capture anyone hanging around outside, damaging the shop windows etc.; An Identification Standard camera installed at the main entrance to provide a 'head & shoulders' shot of all customers; A camera overseeing the serving counter to record customers being served. Installation of a microphone on this camera should also be considered, as this would record threats, racial abuse etc.
- Storage capacity: Sufficient to store images for a minimum 14 days (approx 4 Terabytes). (Not the 31 days offered in the schedule)
- Download facility: Ability to export recorded images onto removable DVD/CD/Memory Stick with its own software to enable playback.
- Requirement to produce: Production of footage to Police, Trading Standards or Council within 3 days of request.

3.2 **Responsible Authorities** - No representations have been received from responsible authorities

4. Other people

4.1 Representations have been received from 3 residents.

- Suzanne Gardiner has stated that she is already woken by the noise of staff leaving and closing the premises and has expressed concerns that the disturbance will continue for an extra hour if the licence is granted. She has also expressed concerns that granting the application will set a precedent for other premises seeking the same thing which will cause further disturbance.
- Rachel Skal has said that she is worried that the licence, if granted, could result in an increase in disorder, noise, disturbance and crime. She has stated that she has already noticed such problems since the premises opened and is concerned that the licence for late night refreshment could encourage people to congregate outside her property late in the evening after drinking.
- Vivian Bracey has said he/she hears noisy customers "hanging around" at the premises and has expressed concerns about encouraging this to go on later if the licence is granted.

4.2 Copies of all 3 representations are attached at **Appendix B**. The locations of the residents' properties, and that of the premises, are shown on the location plan at **Appendix C**.

5. Local Policy Considerations

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

5.5 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (Paragraph 4.2)

5.6 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)

5.7 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)

5.8 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)

5.9 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)

5.10 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.

5.11 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)

- 5.12 The Council has discretion on whether to grant applications for licences and to impose conditions on granting and reviewing licences, only when relevant representations are made by “interested parties” or by “responsible authorities“(Paragraph 6.1)
- 5.13 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. (Paragraph1.3)
- 5.14 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. (Paragraph1.4)
- 5.15 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. (Paragraph1.5)
- 5.16 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. (Paragraph1.6)
- 5.17 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)
- 5.18 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)
- 5.19 Capacity limits are commonly made a condition of a licence on public safety grounds but should also be considered for licensed pubs and clubs where overcrowding may lead to disorder and violence. If such a condition is appropriate, door supervisors may be needed to ensure the numbers are appropriately controlled. (Paragraph 5.17)
- 5.20 Where relevant representations are received, the Council may attach appropriate conditions to licences, appropriate to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after midnight the licence holder, will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. The Council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (Paragraph 5.26)
- 5.21 Where the Council receives relevant representations, or where a responsible authority or an interested party seeks a review, the Council may consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (Paragraph 5.30)
- 5.22 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies; provision of signs, publicity and dispersal policies. (Paragraph 5.31)

6 National Guidance

6.1 Guidance has been issued under Section 182 of the Licensing Act 2003.

6.2 Para 2.18 of the Guidance states: “**Public nuisance.** The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”

6.3 Para 2.19 of the Guidance states: “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”

6.4 Para 2.20 of the Guidance states: “Conditions relating to noise nuisance will normally concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.”

6.5 Para 2.21 of the Guidance states: “As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.”

6.6 Para 2.22 of the Guidance states: “Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.”

- 6.7 Para 2.24 of the Guidance states: “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.”
- 6.8 Para 10.10 of the Guidance states: “The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.”
- 6.9 Para 10.12 of the Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.”

7. Licensing Comments

- 7.1 Members are to note that on 25 April 2012, the following amendments to the Licensing Act 2003 came into force:
- 7.2 The Licensing Authority became a Responsible Authority for premises and club premises applications and will have the power to refuse, remove or review a licence without representation from the Police or other Responsible Authority.
- 7.3 Primary Care Trusts and Local Health Boards also joined the list of Responsible Authorities and are able to make representations regarding licensing applications and apply for reviews, even though the licensing objectives have not been revised to include health.
- 7.4 The term 'interested parties' has been replaced by 'any other person' meaning that anyone can voice objections regardless of geographic vicinity, however any such objection must relate to one or more of the licensing objectives.
- 7.5 The Secretary of State has been required to make changes to the Licensing Act Regulations 2005 requiring the Licensing Authority to advertise applications 'in a manner which is prescribed and is likely to bring the application to the attention of the persons who are likely to be affected by it'.
- 7.6 The Committee must have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives which can include:
- Granting the application as requested;
 - Modifying the conditions attached to the licence; or
 - Rejecting all or part of the application.
- 7.7 In determining this application, Members must have regard to the guidance issued by the Secretary of State and the Council's adopted policy statement.
- 7.8 The Council has a statutory duty to promote the licensing objectives and therefore Members can only give consideration to representations that relate to the likely effect the grant of this licence will have on the promotion of those objectives, these being:

- a. the prevention of crime and disorder;
- b. public safety;
- c. the prevention of public nuisance; and
- d. the protection of children from harm.

7.9 The application must be determined on its individual merits and consideration must only be given to this application and the specific premises to which it relates. For this reason, Members are to disregard comments which relate to this application setting a precedent for future applications from other premises. Any such applications in the future would need to be considered on their own merits and residents would have the opportunity to object to those applications at the appropriate time if they had a valid reason for doing so.

7.10 Members can only take into account those representations which relate to one or more of the licensing objectives and must therefore disregard comments relating to parking irregularities.

7.11 Members should consider what if any weight they should attach the incident referred to by Ms. Skal as the incident was reported to Ms. Skal by a neighbour and is not something that Ms. Skal has reported seeing herself.

Background Papers

Service Records

Report Author

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