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## Licensing Act 2003 Sub Committee

17 May 2010

Report of the Director of Neighbourhood Services

### **Section 35(3)(a) Application for the Variation of a premise licence for Efe's Kebab Kitchen, St. Sampson's Square, York.**

#### **Summary**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-010849
3. Name of applicants: Mr Tahsin Kaya.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to extend the hours for late night refreshment to 05:00 hours every day and to remove condition 9, Annex 2 from the licence (i.e. no music to be played).

#### **Background**

6. A copy of the existing premise licence is attached at Annex 1.
7. A copy of the application to vary the licence is attached at Annex 2.

#### **Promotion Of Licensing Objectives**

8. The operating schedule submitted by the applicant shows that, in addition to existing conditions attached to the current licence, the licensing objectives would be met as follows:
9. General: 1) CCTV to be fitted as soon as possible. 2) Two members of staff to work over the weekend.
10. The prevention of crime and disorder: Any video footage will be shared with the police if needed.
11. Public Safety. No additional steps proposed.
12. Public Nuisance. 1) Two members of staff to work on the unit over the weekend to stop people queuing up and making a nuisance.

13. The protection of children from harm. No additional steps proposed.

#### **Special Policy Consideration**

14. This premise is not located within the special policy area.

#### **Consultation**

15. Consultation was carried out by the applicant in accordance with s13, and s17(5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements.
16. All procedural aspects of this application have been complied with.

#### **Summary of Representations made by Responsible Authorities**

17. A representation was received from North Yorkshire Police on the grounds of crime and disorder, public nuisance and the protection of children from harm. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
1. CCTV will be installed to cover the premises and will include the area to where the public congregate to purchase food. It will be maintained, working and recording at all times when the premises are open. The recordings should be of sufficient quality to be produced in Court or other such Hearing. Copies of the recordings will be kept available for any Responsible Authority for 7 days.
  2. Prominent clear and legible notices shall be displayed requesting the public to respect the needs of local residents and to leave the premises and area quietly.
  3. Upon closing the premises at the conclusion of business staff will undertake a general litter pick-up and tidy of the general area of the premises
  4. On a Friday and Saturday evening two members of staff shall be employed at all times the venue is open for business.
  5. Unaccompanied children (i.e. persons under the age of 18 years) shall not be served.
  6. Noise originating from within the premises shall be inaudible at the nearest noise sensitive premise.

#### **Summary of Representations made by Interested Parties**

18. A Representation has been received from 1 Interested Party which is attached at Annex 3.

19. A map showing the general area around the venue from which the representation is focused is attached at Annex 4
20. An “interested party” is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.
21. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

22. There are no planning issues or conditions relevant to this application.

### **Options**

23. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
24. Option 1: Grant the variation of the licence in the terms applied for.
25. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
26. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
27. Option 4: Reject the application.

### **Analysis**

28. The following could be the result of any decision made this Sub Committee:-
29. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
30. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
31. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
32. Option 4: This decision could be appealed at Magistrates Court by the applicant.

## **Corporate Strategy**

33. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
34. The promotion of the licensing objectives will support the Council's strategy to make York a safer city with low crime rates and high opinions of the city's safety record.

## **Implications**

35.

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

## **Risk Management**

36. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
37. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

## **Recommendations**

38. Members determine the application.  
Reason: To address the representations received as required by the Licensing Act 2003.

## Contact Details

**Author:**

John Lacy  
Licensing Manager  
Licensing & Regulation

Ext: 1593

**Chief Officer Responsible for the report:**

Andy Hudson  
Assistant Director  
Neighbourhood Services

Ext: 1814

**Report Approved**



**Date** 10 May 2010

**Specialist Implications Officer(s):**

Head of Legal & Democratic Legal Services

Ext: 1004

**Wards Affected: Guildhall East**

**For further information please contact the author of the report**

**Background Papers:**

- Annex 1** - Copy of existing premises licence.
- Annex 2** - Copy of application form.
- Annex 3** - Copy of representation from Interested Party
- Annex 4** - Map showing general area from which representations received.
- Annex 5** - Mandatory Conditions.
- Annex 6** - Legislation and Policy Considerations.