

CAMBRIDGE CITY COUNCIL

REPORT OF: The Licensing Officer

TO: Licensing (2003 Act) Sub-Committee 21st November 2005

APPLICATION: Application for a new Premises licence:
Carlos Charcoal Grill, 70 Mill Road.

WARD: Petersfield

1 INTRODUCTION

1.1 To consider and determine this application for a new premises licence for Carlos Charcoal Grill, taking into account the representations of interested parties detailed in paragraph 5 of the report and the policy considerations detailed in paragraph 6 below.

1.2 Mr Yeter Kahraman is seeking the following:

Provision of Late Night Refreshment

Mon – Sun 12.00 to 03.00

Hours premises are open

Not stated – to be clarified

1.3 A copy of the relevant application is attached at Appendix A. A street map of the area is also included.

1.4 This application was received on 8th September 2005, but was not correctly advertised until 4th October 2005. The application therefore needs to be decided by 2nd December 2005 to meet the statutory timescale for the determination of applications.

1.5 The Sub-Committee's decision must be made with a view to promoting one or more of the four licensing objectives, namely:

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

The key objectives regarding late night refreshment are considered to be (a) & (c).

2 BACKGROUND

2.1 Carlos Charcoal Grill is an established business situated in Mill Road, which has

been operating since 1979 and currently carries on the business of providing hot food after 23.00. There are no planning restrictions on hours of opening. The Licensing Act 2003 now requires premises providing hot food after 23.00 to be licensed.

3. LICENSING OBJECTIVES ADDRESSED BY APPLICANT

- 3.1 The Operating Schedule submitted by the applicant in part Q of the application addresses the four licensing objectives. The applicant has proposed one step, below, in support of the licensing objectives. Para 5.67 of the Guidance states that 'proposals contained in the operating schedule to promote the licensing objectives should be translated into clear and understandable conditions consistent with the proposals in the operating schedule'

The following would be considered an understandable condition:

The prevention of public nuisance

Prominent, clear and legible notices shall be displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.

4. REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

- 4.1 No representations have been received from Planning, Cambridgeshire Fire & Rescue, Cambridgeshire Constabulary, Health and Safety, Environmental Protection, Child Protection and Trading Standards, the Responsible Authorities.

5. REPRESENTATIONS FROM INTERESTED PARTIES

- 5.1 One hundred and six representations have been received from "interested parties" defined as: a person living in the vicinity of the premises; a body representing persons living in that vicinity; a person involved in the business in that vicinity and a body representing persons involved in such a business. The ordinary meaning of vicinity is 'near'. Representations have been received from Mill Road, Gwydir Street, Collier Road, Emery Street, Mawson Road, Covent Garden, Glisson Road, Tenison Road, Perowne Street, Devonshire Road, Mill Street, Lyndewoode Road, Cross Street, St Barnabas Road, Mackenzie Road, Guest Road and Willis Road.
- 5.2 Six representations relate specifically to Carlos Charcoal Grill – attached as Appendix B, eighty four representations relate to both Carlos Charcoal Grill and the Bosphorus Marigal – attached as Appendix D and sixteen representations relate to 'the takeaways in Mill Road', but are not named specifically – attached as Appendix E. Members should note that the letters are attached in their entirety and that not all matters raised within the representations are relevant matters for consideration under the Licensing Act 2003.
- 5.3 Representations refer to all four objectives, but mainly to concerns surrounding the Mill Road area, its residential nature, noise causing disturbance and disruption into the night from the longer hours and the granting of late night licences in general. The Secretary of the Glisson Road/ Tenison Road Area residents association points out that an application was considered under the Late Night Refreshment Act in 2002 when Committee restricted the hours to midnight. As the licence only applied to premises with chairs and tables, they

were stacked away at midnight to avoid the regulation and continue trading. Many letters feel that midnight would be a sensible compromise. Cumulative impact is also raised as a result of the effects of Carlos Charcoal Grill and the Bosphorus Marigal opening until late in a limited geographic area.

6 POLICY CONSIDERATIONS

6.1 In carrying out its licensing functions, the Licensing Authority must have regard to its Statement of Licensing Policy and any statutory guidance issued under Section 182 of the Licensing Act 2003.

6.2 **The Council's Statement of Licensing Policy:** the following sections/paragraphs are applicable to this application:

- Objectives, section 2.4
- Fundamental principles 4.1 – 4.3
- Cumulative Impact, section 5 (5.3 relates present position)
- Licensing Hours, section 6.3
- Licence Conditions, sections 8.1 – 8.7
- Duplication/ Planning 9.4 & 9.5

6.3 **The Statutory Guidance:** the following sections/paragraphs are applicable to this application:

Sections 5.20 – 5.25 cover the provision of late night refreshment. 5.22 consider the key licensing objectives in connection with late night refreshment are the prevention of crime & disorder and public nuisance.

Annex B (page142/4) provides an extract from the Licensing Act 2003 (Schedule 2) on the provision of late night refreshment.

Section 5.70 and 5.73- 5.77 covers interested parties and the relevance of representations. Section 5.77 recommends that in borderline cases the benefit of doubt should be given to the interested party making the representation. The subsequent hearing would provide an opportunity for the person to amplify and clarify it. If it then emerged that the representation should not be supported, the licensing authority could decide not to take any action.

Section 3.51 – the planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency

The Guidance states that the Licensing Act 2003 does not affect the continued use of the powers of an environmental health officer in respect of statutory noise nuisance under the Environmental Protection Act 1990. However these general duties will not always adequately cover specific issues arising in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence. If existing law places responsibilities on the employer/operator of the premises, then it cannot be necessary to impose the same or similar duties on the premises licence (Section 7.13).

Annex G (page 164) covers conditions relating to the prevention of public

nuisance. The Environmental Protection Act 1990 and the Noise Act 1996 provide some protection to the general public from the effects of noise nuisance. The provisions of Part 8 of the Licensing Act 2003 enable the police to close premises that are causing nuisance resulting from noise emanating from the premises. The Secretary of States guidance states that these matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

Committee will need to consider the above in deciding whether to attach any conditions in addition to those referred to in 3.1 above.

- 6.4 Members should only impose conditions, which are necessary and proportionate for the promotion of the licensing objectives (3.17). Conditions which are imprecise or difficult to observe should be avoided (7.7).

7. CONCLUSIONS

- 7.1 The Licensing Authority has a duty under the Licensing Act 2003 by promoting the Licensing Objectives. Each objective has equal importance. In carrying out its licensing functions, the Licensing Authority must also have regard to its Statement of Licensing Policy, any Statutory Guidance under the Licensing Act 2003 and is bound by the Human Rights Act 1998. The Council must also fulfill its obligations under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in Cambridge.

8. OPTIONS

- 8.1 Members should, having regard to the representations, take such steps as they consider are necessary for the promotion of the licensing objectives. The steps are to grant the licence subject to conditions consistent with the operating schedule, modified as necessary, to exclude a licensable activity, or to reject the application. Conditions are modified if they are altered, omitted or any new condition added. (Licensing Act 2003 section 18(4)& (5)).

9 RECOMMENDATION

- 9.1 That members' determine the application on its individual merits.

BACKGROUND PAPERS:

The following are the background papers that were used in the preparation of this report:

Guidance issued under section 182 of the Licensing Act 2003

The Council's Statement of Licensing Policy

To inspect these documents contact Christine Allison on ext. 7899.

The author and contact officer for queries on the report is Christine Allison on extension 7899.

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Carlos

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