

CAMBRIDGE CITY COUNCIL

REPORT OF: The Licensing Manager

TO: Licensing Sub-Committee

17th January 2011

APPLICATION: Application for a new Premises licence:
Cyprus Kebab House, Cherry Hinton Road, Cambridge

WARD: Coleridge

1 INTRODUCTION

1.1 To consider and determine this application for a new premises licence for the Cyprus Kebab House, taking into account the representations of the responsible authorities detailed in paragraph 4, the interested parties detailed in paragraph 5 and the policy considerations detailed in paragraph 6 of the report.

1.2 Mr Adem Ozkurtulus is seeking a new premises licence as follows:

Late night refreshment (indoors)

Mon – Thur & Sun 23.00 to 00.00

Fri – Sat 23.00 to 03.00

Non-standard timings

Christmas Eve and New Years Eve 23:00 to 03:00

Hours premises are open

Mon – Thur & Sun 23.00 to 00.00

Fri – Sat 23.00 to 03.00

Non-standard timings

Christmas Eve and New Years Eve 23:00 to 03:00

1.3 A copy of the application is attached at Appendix A.

1.4 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 with regard to late night refreshment are considered to be (a) & (c)

2 BACKGROUND

2.1 The applicant describes the premises as a takeaway and restaurant with tables and chairs to the front of the premises. There is no history of grant of a premises

licence under the Licensing Act 2003. The Licensing Act 2003 requires premises providing hot food between the hours of 23.00 & 05.00 hours to be licensed. The premises is not situated in a cumulative impact area.

3. LICENSING OBJECTIVES ADDRESSED BY APPLICANT

- 3.1 The Operating Schedule submitted by the applicant in part P of the application addresses the four licensing objectives. Paragraphs 8.41-8.45 and Section 10 of the Section 182 Guidance refer to the operating schedule and licence conditions. Proposals will very often translate directly into conditions that will be attached to the premises licence. They should be realistic and within the control of the applicant/management responsible for running the premises. The applicant has proposed the following step in support of the licensing objectives which could be considered an appropriate condition:

Public Safety

Escape routes and exits shall be maintained to ensure that they are clearly identified and are not obstructed.

4. REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

- 4.1 A representation has been received from the Police relating to three of the four licensing objectives and is attached in its entirety at Appendix B. The police state a number of reasons in their representation, giving rise to the view that the grant of a late night refreshment licence in such a location to the hours requested would have a negative cumulative impact on the licensing objectives of the prevention of crime and disorder, public nuisance and the protection of public safety.
- 4.2 Furthermore, the police believe that they would be failing in their obligation under Section 17 of the Crime and Disorder Act 1998 as amended, when exercising functions to give due regard to the likely effect of the exercise of those functions on, and the need to do all that they reasonably can to prevent crime, disorder anti-social and other behaviour adversely affecting the local environment, including the misuse of drugs, alcohol and other substances in its area.
- 4.3 The police view is that the application should be refused and the premises should operate to normal hours until a proven track record has been achieved, showing that no adverse consequences have arisen as a result of its use that offend the licensing objectives.
- 4.4 However, should members not take the view expressed in paragraph 4.3 above, the police request that consideration be given to imposing the following conditions as a minimum:
- The Prevention of Crime and Disorder
1. A digital CCTV system with appropriate recording equipment will be installed, operated and maintained throughout the premises internally to cover all public areas with sufficient numbers of cameras as agreed with Cambridge Police. Images shall be retained for 31 days and made available to the police or authorised officer on reasonable request. The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy with GMT.
 2. Glassware or bottles are not to be supplied to customers.
- Public Safety
3. An incident book is kept on the premises and staff are trained in the completion of this. Incident reports containing the names and details of offenders will be passed to the City Cambac manager.

4. Regular health & safety risk assessments are carried out.
5. Patrons will be asked to leave in the event of a greater number of people congregating within the premises than is conducive to public safety.
6. Patrons will be actively discouraged from congregating outside the front of the premises.

The Prevention of Public Nuisance

7. All doors and windows will be kept closed at night to prevent noise nuisance.
8. Music will not be played within the premises
- [9. Patrons will be asked to leave the premises quietly and with due consideration for neighbouring properties. Notices will be displayed in a prominent customer facing area to that effect.] (see paragraph 4.5 below for TLEP similar condition- wording as agreed by applicant)
10. If a delivery service is provided delivery drivers are to be instructed to enter and leave their vehicles quietly and considerately, and not to leave engines running, and to park considerately.
11. Patrons who frequent the premises and behave in a disorderly manner or regularly leave in a noisy fashion will be banned.

The Protection of Children from Harm

12. Any children that frequent the premises during the hours when late night refreshment is provided must be in the company of an adult.

4.5 A representation has been received from Planning, Attached at Appendix C. A planning restriction has been imposed stating that the takeaway may not be open after 23:30 every day, the reason being to protect the amenity of local residents and occupiers in accordance with Cambridge Local Plan 2206 policy 4/13. The application shows hours, which exceed this, and an objection is therefore raised.

4.6 Discussions have taken place between the applicant and the team leader, Environmental Protection regarding the application and it has been agreed by both parties that a representation would not be made providing the following measures are converted into conditions on the licence, if granted:

The Prevention of Public Nuisance

1. Prominent, clear and legible notices shall be displayed at the exit, requesting patrons departing to respect the needs of local residents and to leave the premises and the area quietly. Staff shall monitor exits from the premises at closing times and shall remind any noisy customers to respect the needs of local residents and to be quiet.
2. The licence holder shall provide and maintain a suitable litterbin, within the public area of the premises.

4.7 No representations have been received from, Cambridgeshire Fire & Rescue, the Health & Safety Environmental Health Manager, Child Protection and Trading Standards, the remaining Responsible Authorities.

5. REPRESENTATIONS FROM INTERESTED PARTIES

5.1 One representation attached at Appendix D has been received from an 'interested party' defined as: a person living in that vicinity; a person involved in the business in that vicinity a body representing persons living in, or involved in such a business, or a member of the relevant licensing authority. The representation, from the Chair of the Rustat Neighbourhood Assn, also representing the Rathmore Road and Cherry Hinton Road Residents Associations, has been attached in its entirety. Not all matters raised within the representation may be relevant for consideration under the Licensing Act 2003.

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
 - Fundamental principles, section 4
 - Licensing Hours, section 6
 - Licence Conditions, section 8

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

Sections 2.1 – 2.50 of the guidance cover the four licensing objectives/

Sections 2.32 – 2.40 of the guidance cover public nuisance. Section 2.32 considers it important that that licensing authorities focus on impacts of the licensable activities at the premises on persons living and working in the vicinity that are disproportionate and unreasonable.

Sections 3.32 – 3.39 cover the provision of late night refreshment. 3.36 considers the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and the public nuisance.

Section 8.5 – 8.8 covers interested parties, sections 8.9 – 8.15, the role of Councillors and sections 8.16- 8.21, responsible authorities.

Section 9 covers the determination of applications, with sections 9.3 – 9.13 giving guidance to cover situations where representations have been made. Sections 9.4 –9.6 address the issues of relevance and vicinity. Section 9.12 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 in respect of the application.

Section 10.15 – 10.18 covers duplication and other statutory provisions. The Guidance states that the Licensing Act 2003 does not affect the continued use of inspection and enforcement powers conferred by other legislation; for example the powers of an environmental health officer in relation to 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.

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

Annex D covers conditions relating to the prevention of public nuisance. The

Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. The police can 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.

- 6.4 Members should only impose conditions, which are proportionate and are necessary to promote the licensing objectives (10.11, 10.13 & 10.14). Conditions, which are imprecise or difficult for a licence holder to observe, should be avoided (10.4).

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, 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. 7879.

The author and contact officer for queries on the report is Christine Allison, on extension 7879.

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