

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: German Doner Kebab, 84 Cambridge Street, Aylesbury, Buckinghamshire, HP20 1BA
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Kerryann Ashton – Licensing Officer
Report Author	Kerryann Ashton – Licensing Officer
Ward/s Affected	Aylesbury North

1. Purpose of Report

To provide Members with information enabling the determination of an application for a new Premises Licence, in respect of which relevant representations have been received.

The Application has been submitted by West London Foods Covent Garden Ltd of 9 Churchill Court, 58 Station Road, North Harrow, Middlesex, HA2 7SA (“the applicant”) in respect of German Doner Kebab, 84 Cambridge Street, Aylesbury, Buckingham HP20 1BA (“the premises”).

2. Background

2.1 The premises consist of a unit in the Cambridge Retail Park. It is a ground floor indoor restaurant with approx. 76 covers. The site is located off Cambridge Street in an area that is a mix of commercial and residential properties.

A location plan showing the premises location is attached to this report marked **Appendix 1**.

3. The Application

3.1 This application is for a new Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application is attached to this Report marked **Appendix 2**. A plan of the “premises” is attached **Appendix 3**.

Following discussions with the Thames Valley Police Licensing Officer the applicant agreed to modify the hours of the application (**see Appendix 4**)

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
The provision of late night refreshment Indoors only	Every Day 23:00 – 02:00
Hours premises are open to the public	Not stated

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Agreed a reduction to the hours. No objection, **Appendix 4.**
- 4.1.2 **The Licensing Authority:** No response received.
- 4.1.3 **The Fire and Rescue Authority:** No objection, **Appendix 5.**
- 4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received.
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** Submitted a representation during the consultation period. A copy of the representation is attached as **Appendix 6.**
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received.
- 4.1.7 **The Safeguarding and Child Protection Unit:** No response received.
- 4.1.8 **The Primary Care Trust:** No response received.

4.2 Any other persons: No representations were received during the 28 day consultation from other parties.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received largely raise the following issues:

- Prevention of a public nuisance

The representation mentions concerns given the proximity of a number of dwellings to 84 Cambridge Street they believe that the above proposal would not promote the prevention of public nuisance objective set out in the Act as regards the late night liberation of noise from customers, use of kitchen plant, and delivery activity. And it is their view the proposed conditions in the operating schedule are insufficient to mitigate public nuisance.

5.2 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties. These are set out in section 10 below.

6. Policy Considerations

- 6.1 Regard must be had to the Council's adopted Licensing Policy published February 2022 when determining this application. Part C, Para 3.14 states the Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects this to be demonstrated through the operating schedule.

The Licensing Authority considers that conditions play a key part in the promotion of the licensing objectives. Before making applications, applicants are expected to risk assess their proposed operations with reference to the licensing objectives. Potential applicants are encouraged to discuss their proposals with the Licensing Authority and responsible authorities. This will help them to formulate proposed conditions which will meet the licensing objectives and avoid objections ("relevant representations"). Where they fail to do so and relevant representations are received, the Licensing Authority will have to consider whether additional conditions are appropriate to promote the licensing objectives. Breaches of condition in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. (Para 3.18)

In preparing their applications, applicants are strongly encouraged to consider the terms of this Policy in general and this chapter in particular. In considering applications, the Licensing Authority will also take this Policy as a starting point. (Para 3.19)

Applicants' attention is drawn to the non-exhaustive pool of conditions published by the licensing service and available on the Council's website. These conditions may be of use to applicants when completing operating schedules. In accordance with case law, (Crawley BC v Attenborough [2006]), the licensing authority is entitled to go through any draft conditions which are being offered by the applicant or as part of the application process and to advise them of appropriate wording which will make the condition clear and enforceable and seek their agreement to amend their application to achieve this objective. The conditions listed are similar to those which the Licensing Authority has found particularly useful in promoting the licensing objectives when addressing concerns raised by responsible authorities and other parties. In appropriate circumstances, the Licensing Authority will draw upon these conditions when exercising its licensing powers. (Para 3.21)

Of particular relevance (but not limited to) the following:

Anti-social behaviour

Licensing is not the primary mechanism for controlling anti-social behaviour away from premises and beyond the direct control of operators. However, it is a key aspect of such control and licensing law is part of the holistic approach to the management of the evening and night time economy in town and city centres as well as rural areas and to some extent during the daytime too. Therefore, this Policy acknowledges the contribution of individual premises and, in certain circumstances, groups of premises to anti-social behaviour. (Para 2.36)

Prevention of a public nuisance

In considering all licence applications, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. Much weight will be placed on

recommendations made by Environmental Health Officers in terms of preventing public nuisance. (Para 3.36)

(Para 3.37) Particular measures include:

Customer departure. The steps taken or proposed to be taken by the applicant to prevent disturbance by customers leaving. Such steps will include proper winding down policies so that customers leave gradually and quietly, notices to customers requesting respect for neighbours, the use of dedicated taxis, management of queues for taxis, direction of customers away from residential areas, supervision of exterior areas, requesting customers to respect neighbours and prevention of customers gathering outside the premises.

Deliveries and waste collections. As far as possible delivery and collection times should be arranged to minimise the risk of noise nuisance to residents and other businesses in the vicinity. Staff should avoid placing glass bottles and other waste outside late at night unless suitable noise mitigation measures are in place.

- 6.2 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

In relation to the prevention of public nuisance the Statutory Guidance states:

“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. (Para 2.21)

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 may 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. (Para 2.22)

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. 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. (Para 2.24)

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 the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night. (Para 2.27).”

7. Links to Council Policy Objectives

- 7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

8. Resources, Risk and Other Implications

- 8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.
- 8.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.
- 8.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.
- 8.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.
- 8.5 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interfered with.
- 8.6 Therefore if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to

achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.

- 8.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.
- 8.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

9. Determination by the Licensing Sub-Committee

- 9.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

- 9.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.
- 9.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.
- 9.4 The following options are available to the Licensing Sub Committee:
- 9.4.1 Grant the Premises Licence - subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.
- 9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.
- 9.4.3 Reject the whole of the Application.
- 9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received.

9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the four licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

10. Conditions

10.1 Proposed Conditions

Re-drafted proposed licence conditions to ensure they are clear and enforceable from the ones originally proposed in the application.

General Licensing Objectives

The premises shall install and maintain a comprehensive CCTV system in accordance with any minimum requirements of Thames Valley Police. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.

The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.

All recordings shall be stored for a minimum period of 31 days with date and time stamping.

Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

The prevention of crime and disorder

The premises will only operate a takeaway and delivery service after 2300hrs.

Secluded areas such as bathrooms will be checked every 30 minutes to discourage inappropriate behaviour or gatherings.

Glass bottles will not be sold after 2300hrs.

Public Safety

A minimum three staff members will be present on site at all times.

Staff will undergo training in crowd management and conflict resolution to be well equipped in handling intoxicated or disruptive patrons effectively.

An incident log shall be kept at the premises and made available on request to an authorised officer of Buckinghamshire Council or Thames Valley Police. It must be completed within 24 hours of the incident and will record the following: (a) all crimes reported to the venue (b) all ejections of patrons (c) any complaints received concerning crime and disorder (d) any incidents of disorder (e) any faults in the CCTV system (f) any visit by a relevant authority or emergency service.

Fire drill records are updated quarterly to keep everybody updated on the nearest exit.

A copy of the Fire risk assessment is maintained on site at all times.

The prevention of public nuisance

Notices, at least A4 in size, shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

All windows are double glazed to minimize the breakout of noise.

The premises is air-conditioned to avoid the need to open doors and windows for ventilation.

Disposal of glass bottles externally will not take place after 2300.

All ventilation and extraction systems are designed and maintained to prevent noxious smells causing a nuisance to nearby properties.

The protection of children from harm

Not stated.

Informative/s -

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Background Papers:	Application Ref PR202410-357475 Licensing Act 2003, as amended. Licensing Policy – As adopted March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.