

To the Chair and Members
of the
LICENSING SUB-COMMITTEE

Mrs P A Brown
742224
PAB/EVB – R82/49

14 September 2007

Dear Sir/Madam

A meeting of the **LICENSING SUB-COMMITTEE** will be held in **TRAINING ROOM 1, CIVIC OFFICES, MERRIAL STREET, NEWCASTLE** on **WEDNESDAY, 26 SEPTEMBER 2007 at 2.00pm.**

A G E N D A

Details of the procedure to be followed by the Sub-Committee together with Guidance Notes relating to Human Rights Act 1988 are attached.

1. To consider the report of your Officers on items requiring decisions.

Yours faithfully

A CAMPBELL

Democratic Services Manager

GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

**PROCEDURE TO BE FOLLOWED BY THE
LICENSING SUB-COMMITTEE**

NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the person who has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person.
5. Members of the Sub-Committee will then have the opportunity to question that person.
6. The person making the representations will then call any witness in support of their representation.
7. The applicant will then have the opportunity to question that witness.
8. Members of the Sub-Committee will have the opportunity to question that witness.
9. The applicant will then have the opportunity to give evidence in response to the application.
10. The person making the representations will have the opportunity to question the applicant.
11. Members of the Sub-Committee will have the opportunity to question the applicant.
12. The applicant will call any witness in support of their application.
13. The person making representations will have the right to question that witness.

14. Members of the Sub-Committee will have the right to question that witness.
15. The person making representations will have the right to address the Sub-Committee.
16. The applicant will have the opportunity to address the Sub-Committee.
17. All parties will then leave the room while the Sub-Committee consider their decision.
18. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**CORPORATE BOARD'S REPORT TO THE
LICENSING SUB-COMMITTEE**

26 September 2007

1. **APPLICATION FOR THE CONVERSION TO A PREMISES LICENCE WITH
VARIATION IN RESPECT OF THE PREMISES KNOWN AS BEST KEBABS**

1. **Details of Application**

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|--|--|
| (a) <u>Applicant</u> | Muammer Kose |
| (b) <u>Premises</u> | Best Kebab House, 41 George Street,
Newcastle-under-Lyme ST5 1JU |
| (c) <u>Application for</u> | Premises Licence (copy of application
form attached as Appendix 'A' – blue
paper) a copy of the existing Premises
Licence is attached at Appendix 'B' –
pink paper |
| (d) <u>Proposed licensable activities</u> | The Provision of Late Night
Refreshment |
| (e) <u>Proposed hours of licensable
activities</u>
Sunday to Saturday | 23.00 – 03.00 |
| (f) <u>Other proposed opening hours</u> | None |
| (g) <u>Location</u> | The premises is located on George
Street in a mixed residential and
commercial area. |

2. **Application**

The application is for a variation of a premises licence under section 34 of the Licensing Act 2003 for the provision of late night refreshment. The applicant intends to provide hot food for sale between the hours of 23.00 and 03.00.

3. **Steps proposed by applicant to promote the licensing objectives in
respect of the variation application**

- | | |
|--------------------|--|
| Crime and disorder | CCTV system to be installed and
maintained on the premises.
Recordings shall be kept for a
minimum of 31 days and made
available to police on request.
Clear and legible notices shall be |
|--------------------|--|

displayed with the message "CCTV in operation".

No less than two members of staff shall be on the premises from 22.00 until terminal hour.

Public safety

Appropriate fire safety procedures are in place including fire extinguishers (H²O and CO²) internally illuminated fire exit signs, a smoke detector and emergency lighting.

All emergency exits will remain clearly marked at all times.

Emergency escape routes will be kept free of obstruction at all times.

Public nuisance

Extraction system to be maintained and serviced regularly by a qualified engineer,

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

Customers will be discouraged from congregating outside the premises.

Prominent, clear and legible notices will be displayed requesting that customers do not congregate outside the premises.

Any queues inside the premises will be monitored by a member of staff to ensure compliance with the licensing objectives.

NOTE: The Committee will note that as a result of regulation 43 of the Regulatory Reform (Fire and Safety) Order 2005 SI 2005/1541 the proposed conditions under public safety (with the exception of emergency lighting) will not be attached to the premises licence as this matter will be enforced by Staffordshire Fire and Rescue Services under the above mentioned legislation.

4. **Consultation**

The responsible authorities have been notified of the application. The applicant has advertised the application, as required, by way of poster in the window and by advert in a local newspaper. The following relevant representations have been received.

(a) **Responsible Authorities**

There have been three representations received from responsible authorities, Staffordshire Police Service, the Environmental Health Department and Regeneration and Planning Department. They are attached at Appendix 'C' – yellow paper.

(b) Interested parties

There has been one representation from an interested party.

5. **Policy Considerations**

(a) Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) the prevention of crime and disorder
- (ii) public safety
- (iii) the prevention of public nuisance
- (iv) the protection of children from harm

(b) Policy Statement

The Licensing Act 2003 required the Council to publish a "Statement of Licensing Policy" that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:

- (i) Paragraph 2.9 – Trading hours
- (ii) Paragraph 2.10 and 4.3 Protection of Children from Harm
- (iii) Paragraph 2.11 illegal sales of Age Restricted Goods
- (iv) Paragraph 2.15 and 4.1 Public Safety
- (v) Paragraph 4.4 Prevention of Crime and Disorder

(c) Statutory Guidance

- (i) National guidance regarding the control of areas outside the premises is laid down in paragraph 3.11; and
- (ii) National Guidance regarding licensing hours is laid out in paragraphs 3.29 and 3.30.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.

6. **Comments**

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider necessary for the promotion of the licensing objectives as set out in paragraph 7(a) above.

- (a) Grant the application as requested; or
- (b) Modify the conditions of the licence, by altering or omitting or adding to them; or
- (c) Reject the whole or part of the application.

The Sub-Committee are asked to note that they may not modify the conditions or reject the whole or part of the application merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

7. **Surrounding Premises Licences**

Whilst the Committee must look at this application in isolation to determine whether any conditions or powers need to be exercised in a necessary and proportionate manner, there are a number of similar establishments in close proximity to this premises that have the following licensing hours:-

Golden Wok Chinese Takeaway 43 George Street	Monday to Saturday 23.00 – 00.30 Sunday – 23.00 – 23.30
Kebab House 7 George Street	Monday to Thursday 23.00 – 03.00 Friday to Saturday 23.00 – 04.00 Sunday 23.00 – 02.00
Lims Takeaway 22 & 28 George Street	Sunday to Thursday 23.00 – 00.00 Friday to Saturday 23.00 – 01.00
Sharif Kebab 18 Berkeley Court	Monday to Thursday 23.00 – 03.00 Friday to Saturday – 23.00 – 03.30 Sunday 23.00 – 02.00
Star Kebab House 18 Berkeley Court	Monday 23.00 – 02.00 Tuesday to Thursday 23.00 – 03.00 Friday to Saturday 23.00 – 03.30 Sunday 23.00 – 02.30
Sun Chinese Takeaway 3 George Street	Sunday to Thursday 23.00 – 00.00 Friday to Saturday 23.00 – 01.00
Wongs Chinese Takeaway 5 George Street	Sunday to Thursday 23.00 – 00.30 Friday to Saturday 23.00 – 01.30
Taste of Spice Indian Takeaway 14 Andrew Place	Sunday to Thursday 23.00 – 23.40 Friday to Saturday 23.00 – 00.40

8. **Conditions**

If the Sub-Committee are minded to grant the application with no modification or no additional conditions then the conditions to be attached to the licence taken from the operating schedule are at Appendix 'D' - grey paper.

OPERATING SCHEDULES

1. **The Prevention of Crime and Disorder**

- (a) A CCTV System shall be installed and maintained on the premises. Recordings shall be kept for a minimum of 31 days and made available to police on request.
- (b) Clear and legible notices shall be displayed with the message "CCTV in operation".
- (c) No less than two members of staff shall be on the premises from 22.00 until terminal hour.

2. **Public Safety**

- (a) There shall be kept and maintained an adequate system of emergency lighting.

3. **Prevention of Public Nuisance**

- (a) An extraction system shall be maintained and serviced regularly by a qualified engineer.
- (b) Prominent, clear and legible notices will be displayed at the exit requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
- (c) Customers shall be discouraged from congregating outside the premises.
- (d) Prominent, clear and legible notices will be displayed requesting that customers do not congregate outside the premises.
- (e) Any queues inside the premises will be monitored by a member of staff to ensure compliance with the licensing objectives.