

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
4 July 2013 (10.30 - 11.35 am)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and Frederick Thompson

Labour Group Denis Breading

There were no declarations of pecuniary interest.

The Chairman reminded Members of the action to be taken in an emergency.

Present at the meeting were Mr R Jamal and Mr M Fitrat on behalf of the Applicant. Mr G Hopkins and Ms L Potter (Agents for the Applicant). Mr P Jones representing Havering's Licensing Authority and Mr P Campbell, Licensing Officer.

Also present were the Legal Advisor and the Clerk to the Sub-Committee

**1 APPLICATION FOR A VARIATION OF A PREMISES LICENCE IN
RESPECT OF: TOP KEBABS, 185B HIGH STREET, HORNCHURCH
RM11 3XS**

PREMISES

Top Kebabs
185B High Street
Hornchurch
RM11 3XS

An application for a variation to a premises licence under section 34 of the Licensing Act 2003 ("the Act").

APPLICANTS

Mr Abdul Sabur
124 Frederick Road
Rainham
RM13 8NS

The Applicant's agent – Mr G Hopkins asked leave to address the Sub-Committee concerning questions about the validity of the Planning Service's representation and the inclusion within the Licensing Authority's case of warning letters which had been cited in an application which had taken place in June 2012.

Mr Hopkins contended that the presence of the Planning representation should be dismissed as planning and licensing were two distinct regulatory

processes and the one should not have any impact on the other. With regard to the three earlier warning letters from the Licensing Authority to his client, Mr Hopkins claimed that their inclusion amounted to a “double jeopardy” as they had already been cited in the failed application of 2012.

The Chair invited the Licensing Authority representative, Mr P Jones, to respond.

Mr Jones rejected the argument for disallowing the Planning Service’s representation (which limited the time the premises could stay open to midnight) by stating that the Planning Service was one of the named Responsible Authorities and that, as such, it had a legitimate right to make a representation if appropriate, and that was clearly the case in this instance because the appeal decision made by the Planning Inspectorate in September 2010 clearly identified that significant harm from noise and disturbance had been identified in respect of nearby residents’ living conditions.

With regard to the inclusion of the three older warning letters, they were only present in the context of demonstrating to the Sub-Committee that (along with the fourth letter dated 18 March 2013) there was a pattern of disregard to adhering to licensing conditions applicable at the time.

Mr Hopkins replied that on the night in question in 2013, his client had not been present on the premises having left to visit his wife in hospital.

Mr Jones responded by saying that this was no excuse because even though Mr Sabur might not have been present, the remaining staff ought to have been fully aware of the time the premises had to close and should have closed the premises at the permitted time. Whether present or not, Mr Sabur remained responsible and liable.

The Chairman thanked both parties and stated that the Sub-Committee would bear in mind the comments made and would, in due course, give them suitable weight in its deliberations.

1. Details of the application:

Late Night Refreshment		
Day	Start	Finish
Monday - Sunday	23:00hrs	00:00hrs

Opening Hours		
Day	Start	Finish
Monday - Sunday	12:00hrs	00:00hrs

Variation applied for:

Late Night Refreshment		
Day	Start	Finish
Sunday - Thursday	23:00hrs	00:00hrs
Friday - Saturday	23:00hrs	01:00hrs

Opening Hours		
Day	Start	Finish
Sunday - Thursday	09:00hrs	00:00hrs
Friday - Saturday	09:00hrs	01:00hrs

2. Seasonal variations & Non-standard timings

There were no seasonal variations or non-standard timings applied for in this application.

3. Comments and observations on the application

The applicant had acted in accordance with premises licence regulations 25 and 26 relating to the advertising of the application. The required newspaper advertisement was installed in the 15 May 2013 edition of the Yellow Advertiser.

4. Summary

There were no representations against this application from interested parties.

There were 3 representations against this application from responsible authorities.

5. Details of representations

Valid representations could only address the following licensing objectives:

The prevention of crime and disorder
The prevention of public nuisance
The protection of children from harm
Public safety

Responsible Authorities' representations

Planning Control & Enforcement

This representation was based on the noise and disturbance to residents. A planning application had been rejected in 2010 to extend hours to 1am Sunday to Friday and Bank Holidays and 2am on Saturdays.

Public Health

This Responsible Authority opposed the application based on the grounds of public nuisance due to the close proximity of residential properties and the application being contrary to Licensing Policy 012.

Licensing Authority

The Authority wished to make representation against the application based upon its concerns in relation to the prevention of public nuisance licensing objective.

There were no representations from the following responsible authorities:

The Metropolitan Police
The London Fire and Emergency Planning Authority
The Health & Safety Enforcing Authority
The Trading Standards Service
Children & Families Service
Practice Improvement Lead

6. Representations

Licensing Authority

The representation from the Licensing Authority fell mainly under the heading of the prevention of public nuisance.

The Licensing Authority representative, Mr Paul Jones, argued that:

- The premises was very small and the area in which customers could be accommodated was even smaller. The fear was that with the additional hour, there would be an increase in people wanting to order (and consume) food after leaving local pubs and before leaving the area. There would be people queuing to enter the premises, loitering outside and as a consequence there was likely to be an increase in noise and nuisance.
- Door security was not an answer. Their responsibilities and authority were with the premises itself and entrance thereto, not with managing groups of people congregating outside it.
- The Planning Authority's representation was pertinent because the Planning Inspectorate specifically refused planning permission in 2010 on the basis of the perceived threat of noise nuisance to nearby residents. Section 182 of the guidance to the Act referred to (paragraph 13.56 specifically applied in this instance).
- Between the end of October 2011 and March 2013 (a period of around 15 months) there had been four incidents of the illegal sale of hot food after the permitted hours of trading. Under Havering Licensing Policy 015, the past compliance history of the current management of a premises would be taken into account. The most recent infringement had been recorded at 1.45am some 1¾ hours after the premises should have closed. Clearly this was not acceptable and did not inspire confidence that the business would in future be run properly.

- The operating schedule presented seemed to indicate that Mr Sabur neither knew the area nor did he know his business as he had said that he would be employing door supervisors on Friday and Saturday nights and he was under the impression that this was unlikely to last very long.
- Licensing Policy 012 specifically limited regulated hours to 00.30am in mixed use areas whilst Section 182 of the guidance to the Act urged “licensing authorities and responsible authorities” to adopt policies and practices in respect to nuisance which were focused on “prevention”. Prevention indicated that authorities act in advance of any noise nuisance and it was appropriate that the Sub-Committee should bear that in mind when coming to a decision.
- Havering’s motto was “One Council”. It would be inconsistent for the Licensing Authority to allow one thing whilst another authority (in this instance Planning) said something different. If it really was “One” Council, then all elements had to be sending out a clear and unambiguous message.

In conclusion, Mr Jones urged the Sub-Committee to refuse the application on the grounds that to allow it would send contradictory messages about singleness of intention by the Council and that there was evidence that the Applicant had failed to comply with existing conditions on his licence.

In response, the Applicant’s representative, Mr Hopkins, said that the Licensing Authority’s case was solely based on speculation. He asked Mr Jones whether he had any evidence of any noise nuisance around that part of Hornchurch which had been attributed to his client’s premises. Mr Jones replied that he could not recall any such incidents. Mr Hopkins then addressed Mr Jones’s points:

- Concerning the size of the area for the public, his client did not want large numbers of customers inside at any one time and he employed sufficient staff to minimise the time between an order being placed to the customer leaving the premises.
- Concerning the statement that his client neither knew his business nor the neighbourhood, this was not the case. He had traded in Hornchurch for a long time and knew the area and customer base very well. Concerning the reference to the operating schedule, it might interest the Sub-Committee to know that they were put together on the advice of, and with the help of, the Police. The doorman was to manage customers by firstly being a presence and, because they would be fully trained, to provide support for the staff. CCTV would ensure the premises was afforded another level of security, but the reality was that in the area around his client’s premises, there was unlikely to be an upsurge of unrest. He added that neither the Police nor local residents had made any representations and the absence of objection from the latter more than suggested residents were

unconcerned about nuisance or crime as they had been vocal in other instances. Clearly, the absence of any representation from the Police showed they were also relaxed about the extension to 1.00am.

- The reference by Mr Jones to post pub closure trade as bringing with it alcohol fuelled problems was one which did not suit well in this application as it did not sell alcohol itself and, as his client (and his client's brother – who would be managing the premises) were Muslims, no alcohol would be permitted on the premises (and the door staff would be controlling that anyway). The pubs were at the other end of Hornchurch and it was unlikely that people leaving them would travel across town to his client's premises and people leaving venues near his client's premises would likewise not have to travel across town to find somewhere for a late meal, and thus assist in easing congestion.

Mr Hopkins concluded by reiterating to the Sub-Committee that it seemed unreasonable that three earlier warning letters – already used a year ago against an earlier application – should be allowed any weight in this application. He also reminded the Sub-Committee that whatever the Planning Service's arguments were, they should have no bearing on its deliberations or decision and, as the Licensing Authority's representative had said: there was no evidence of any nuisance which could be attributed to his client. .

7. Determination of Application

Decision:

Consequent upon the hearing held on 4 July 2013, the Sub-Committee's decision regarding the application for a variation to a Premises Licence for Top Kekabs is as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

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

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

**Agreed Facts
Facts/Issues**

Whether the granting of a variation to the premises licence would undermine the licensing objectives.

**The prevention
of public
nuisance,**

Mr Jones asserted that the evidence before the Sub-Committee demonstrated that the Applicant had – over a period of some 15 months – broken the conditions of his licence on four occasions by selling hot food after his premises should have closed and was therefore not a reliable person to have his application accepted. He further argued that the Planning Service had provided evidence that the Planning Inspectorate had, as recently as 2010 refused a similar request for opening later, citing (possible) nuisance to neighbouring residents. He added that the Council’s Licensing Policy (012 – hours and 015 – planning issues) would be compromised if the request were to be allowed.

In addition he stated that there was a presumption in the guidance to the Licensing Act that licensing authorities ought to anticipate nuisance issues at the time applications were being considered and that the Council’s motto: “One Council”, obliged Members to consider whether confused messages might be sent if one part of the Council advocated one time for licensable activities to cease, whilst another granted permission to exceed that limit.

In response Mr Hopkins argued that there was no evidence of any nuisance which could be attributed to his client’s premises. He argued that the most recent breach of licensing conditions resulting in the warning letter of 18 March 2013 was due solely to his client being absent because of a tragic personal loss and that the previous breach had been nearly a year earlier and since then his client had worked hard to improve staff training and had sought – and received – help from the Police to plan for a fully compliant operating schedule. Mr Hopkins contended that the Planning restrictions was not something the Sub-Committee could take into account and both the Planning and Environmental Health Services had compromised their original positions by sending him e-mails which clearly showed that neither service had issues concerning noise nuisance. Neither Planning nor Environmental Health had attended the hearing either.

The Sub-Committee stated that in arriving at its decision, it had taken into account the licensing objectives as contained in the Licensing

Act 2003, the Licensing Guidelines as well as Havering Council's Licensing Policy.

After careful consideration of all issues the Sub-Committee was prepared to grant the variation to the premises licence as requested:

Late Night Refreshment		
Day	Start	Finish
Sunday - Thursday	23:00hrs	00:00hrs
Friday - Saturday	23:00hrs	01:00hrs

Opening Hours		
Day	Start	Finish
Sunday - Thursday	09:00hrs	00:00hrs
Friday - Saturday	09:00hrs	01:00hrs

The Chairman stated that the reason for the decision was that having taken the comments of both the Licensing Authority and the Applicant into consideration and having seen information from the Planning and Environmental Health Services which appeared to contradict, or certainly temper the reasoning behind their written representations, and with no evidence of any current issues pertaining to the licensing objectives, the Sub-Committee was of the opinion that there was no valid reason that the application should not be granted – though he warned the Applicant that although the additional hour had been granted for licensable activities, it could not be used until the matter of the planning restriction had been dealt with.

Chairman