

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
14 March 2016 (10.30 am - 12.30 pm)**

Present:

COUNCILLORS

| | |
|---|--------------------------------|
| Conservative Group | Robert Benham |
| Residents' Group | Reg Whitney |
| East Havering Residents' Group | Linda Van den Hende (Chairman) |

Present at the hearing was Mr Seyit Guzel & Ms Ileana Bud – applicant, Mr G Hopkins & Ms L Potter – applicant's agent. Also in attendance were Mr Marc Gasson; Havering Noise Specialist Officer; Mr John Giles; Havering Health & Safety, Mr Sam Cadman; Havering Planning Enforcement, Havering Licensing officers Mr Paul Campbell and Mr Paul Jones.

Also present were the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

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

4 UPMINSTER KEBAB HOUSE, 127 AVON ROAD, UPMINSTER, RM14 1RQ

PREMISES

Upminster Kebab House
127 Avon Road
Upminster
RM14 1RQ

DETAILS OF APPLICATION

The application for a new premises license was made under section 17 of the Licensing Act 2003 ("the Act")

APPLICANT

Mr Seyit Guzel
127 Avon Road
Romford
RM14 1RQ

1. Details of requested licensable activities

| Supply of Alcohol | | |
|--------------------------|--------------|---------------|
| Day | Start | Finish |
| Sunday to Thursday | 12:00 | 23:00 |
| Friday to Saturday | 12:00 | 01:00 |

| Late Night Refreshments | | |
|--------------------------------|--------------|---------------|
| Day | Start | Finish |
| Friday & Saturday | 23:00 | 02:00 |

| Hours open to the public | | |
|---------------------------------|--------------|---------------|
| Day | Start | Finish |
| Sunday to Thursday | 12:00 | 23:00 |
| Friday & Saturday | 12:00 | 02:00 |

In mediation with the Police the applicant varied the requested hours to:

| Supply of Alcohol | | |
|--------------------------|--------------|---------------|
| Day | Start | Finish |
| Sunday to Thursday | 12:00 | 23:00 |
| Friday to Saturday | 12:00 | 23:00 |

| Hours open to the public | | |
|---------------------------------|--------------|---------------|
| Day | Start | Finish |
| Sunday to Thursday | 12:00 | 23:00 |
| Friday & Saturday | 12:00 | 23:30 |

However, in agreeing to the above hours, the applicant had made no reference to the changing of the hours for Late Night Refreshments from 02:00. This was further clarified with the Police and the applicant had agreed that no Late Night Refreshments hours would be requested.

2. Promotion of the Licensing Objectives

The applicant had acted in accordance with regulations 25 and 26 of *The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005* relating to the advertising of the application. The required public notice had been placed in the 4 December 2015 edition of the Romford Recorder.

There had been some mistakes in the notices initially displayed at the premises. This was pointed out to the agent who had submitted the

application on behalf of Mr Guzel. The notices had been changed and correctly displayed eventually.

3. Details of Representations

Valid representations may only address the four licensing objectives.

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

There had been no representations against the application from interested persons.

There had originally been five representations against the application from responsible authorities. However, Marc Gasson for London Borough of Havering Environmental Health (Noise) team and the Police had withdrawn their representations following mediation with the applicant regarding the hours of opening.

Responsible Authorities

Chief Officer of Metropolitan Police (“the Police”): None

Public Protection: None

London Fire & Emergency Planning Authority (“LFEPA”): None

Children & Families Service: None

The Magistrates Court: None

Licensing Authority:

Mr Campbell represented the Licensing Authority and advised the Sub-Committee that an email message had been received dated 28 February 2016 from Mr Hopkins that stated "Following agreement by Mr Giles (Health & Safety Officer) and the Food Safety Officer that the amended plan was accurate, please find attached the amended application form and plan as agreed at the adjourned hearing"

The application form that had been attached was for Upminster Kebab House at 127 Avon Road and made on behalf of Mr Seyit Guzel but Mr Campbell felt that was where the similarities ended; Mr Campbell informed the Sub-Committee that the application could not be considered to be an "amended application" but should be classified as a new application.

The following differences were noted:

- The applicant's address had changed
 - General description of the premises stated on the new application that it would provide a Take Away Service for customer collection
 - Late Night Refreshment was not being applied for
 - The Supply of Alcohol on a Friday and Saturday had been reduced to 23:00 from 01:00 hours
 - The hours the premises were open had been increased to 23:30 hours Sunday to Thursday and reduced to 23:30 hours on a Friday and Saturday
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- The maximum number of persons to be in the premises at any one time had been omitted from the new application
 - The clause committing the management to make subjective assessments of noise levels outside the perimeter of the premises had been omitted.
 - A requirement for external doors and windows to be kept closed was omitted
 - Requirement for staff to discourage patrons from congregating was omitted
 - A requirement for litter bins and wall mounted ashtrays was not mentioned
 - Notices to advise customers to leave quietly had been added
 - The number of permitted smokers outside the premises had been increased from one person to six people
 - Only one mention of children on the new application "No unaccompanied children under 16 would be allowed on the premises after 20:00 hours"
 - The plan of the premises differed from the original with an increase of covers on the new application

The Licensing Officer informed the Sub-Committee that a new application checklist stated that:

- The fee had been paid but no fee had been paid
- Copies sent to Responsible Authorities - only some of the Authorities were had received copies from the applicant, others had received copies from the Licencing Officer.
- Consent of the DPS - this was not enclosed with the new application.
- A new application was required to be advertised whilst a revised application does not need to be advertised

Mr Campbell reiterated that it was 42 days after the hearing; 18 January that the "revised application" was received by the Responsible Authorities, which calculated to 13 days (9 working days) before the re-convened hearing date of 14th March. This was insufficient time for the Authorities to consider an application that was so completely different from the original and left little time for any negotiation regarding possible conditions and also to be submitted to the Licensing Sub-Committee prior to the hearing for them to consider.

The Government had imposed a 28 day period on applications for a premises licence in which the Responsible Authorities could make representation on an application; The Licensing Authority was therefore of the opinion that it was unreasonable for the applicant to ask that this process be undertaken in 13 days.

Mr Campbell had informed the Sub-Committee that the Licensing Authority was of the opinion that the applicant had not complied with the requirements following the hearing of 18 January 2016 to agree with the Responsible Authorities the way forward and conditions.

The application that was submitted on 29 February was different from the original; it was a new application. The Licensing Officer added that the Responsible Authorities who had not made a representation on the original application had not had an opportunity to object to anything on the revised application and the public had also not been given the opportunity to review the proposed application, conditions or plans.

Mr Campbell commented that the application should be refused and if a premises licence was still required at the venue a new application be made following the set procedure, stating exactly what was proposed at the premises. In that way the public and all of the Responsible Authorities had the opportunity to liaise with the applicant and/or make a representation.

In response to a question from the Sub-Committee, Mr Campbell stated that he could not understand the new conditions as they were not enforceable.

Health & Safety Enforcing Authority:

Mr John Giles representing the Health & Safety Enforcing Authority and Food Safety addressed the Sub-Committee and stated that new plans had been received from the applicant and a meeting had been arranged. Following the meeting, the service was satisfied with the clarification provided by the applicant.

Planning Control & Enforcement:

Mr Sam Cadman represented the Council's Planning Services Team commented that the new application had been received while he was away from the office. The Sub-Committee was informed that the service had not been able to fully review the new application and make a decision. The Sub-Committee noted that a planning decision was due on 25 March 2016 on a planning application by the applicant that was yet to be discharged.

The Sub-Committee noted that planning application had been approved for A3/ A5 use (restaurant and takeaway) with the majority of use being the restaurant.

Public Health:

Mr Marc Gasson represented Environmental Health (Noise) team at the hearing. The Sub-Committee noted that the service had withdrawn its representation at the hearing on 16 January 2016 following mediation and the applicant amending its operating schedule to 23:00. Mr Gasson had stated that there were issues in the new application that had raised concern with the potential for noise inside and outside the premises. It was noted that the proposed condition detailed for 1 to 6 persons to be allowed outside for smoking.

4. Determination of Application

On 18 January 2016, the Sub-Committee decided to adjourn the hearing in order for all parties to meet and agree upon the way forward together with suggested conditions to be attached to the license within a period of 2 months.

The hearing reconvened on 14 March 2016 to consider the application for a premises licence.

5. Applicant's response

In response to the representations from Responsible Authorities, the applicant's agent addressed the Sub-Committee and stated that from the applicant's position, the application was not a new one.

Mr Hopkins stated that the application was for a new Turkish restaurant and the applicant, Mr Guzel and his manager, had over 15 years' experience in restaurants, and also possessed a Personal License.

Mr Hopkins commented that the Health & Safety Enforcing Authority and Food Safety section were now satisfied with the plans for the premises.

Mr Hopkins informed the Sub-Committee that the Police had stated that their concerns related to the early opening of the premises which was not part of the operating schedule. It was stated that the premises was seeking to match the same hours of licensed premises in the area; that the applicant was not interested in a late night venue.

He stated that the restaurant would be for 66 covers with clients from the local area. The main business would be a restaurant with some takeaway services, but not a delivery service. The premises proposed to have only background music in the premises.

Mr Hopkins stated that it was proposed to have only six persons smoking outside the premises any given time. All licensable activities would cease at 23:00 and all takeaway would also cease at 23:00. He added that the applicant would engage with local residents about any concerns and a daily register would be kept. Mr Hopkins added that the conditions offered by the

applicant was in line with the Licensing objectives in relation to the premises.

Decision

Consequent upon the hearing on 14 March 2016, the Sub-Committee's decision regarding the application for a new premises licence for Upminster Kebab House, 127 Avon Road, Upminster, RM14 1RQ was as set out below, for the reason stated.

The Sub-Committee was obliged to determine the application with a view to promoting the licensing objectives.

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 section 117 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

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

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

The Sub-Committee had noted the representations raised in the hearing paperwork and at the hearing and considered these along with the applicant's response.

The Sub-Committee stated that having considered carefully the representations from all parties they had concluded that grave concerns remained about the continued confusion over the precise details of the application and how the premises would operate.

The Sub-Committee considered the revised plans and noted that there had been an additional 20% increase in seating arrangements together with a take away element which would increase the footfall. The Sub-Committee was concerned that there had been changes which all Responsible Authorities may not have had the opportunity to be fully aware of and therefore not had an opportunity to comment.

Licensing Sub-Committee, 14 March 2016

The Sub-Committee therefore refused the application for a premises licence on the grounds of not being satisfied regarding the Licensing Objective of Prevention of Public Nuisance.

Chairman