



Havering
LONDON BOROUGH

Public Protection

London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

The Appropriate Licensing Officer
Licensing Authority
London Borough of Havering
Mercury House
Mercury Gardens
Romford
RM1 3SL

Telephone: 01708 432692
Fax: 01708 432554
email: paul.jones@havering.gov.uk
Textphone ☎: 01708 433175

Date: 3rd June 2013

My Reference: PJJ/012694

Dear Sir

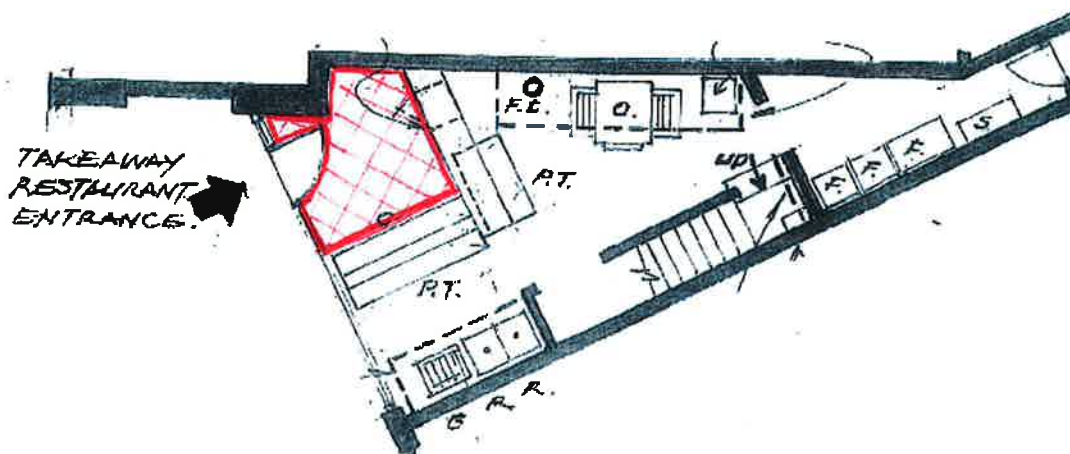
Licensing Act 2003

Top Kebabs 185b High Street Hornchurch RM11 3XS Application to vary a premises licence

Further to the above I can confirm that this Licensing Authority wishes to make representation *against* the application based upon our concerns in relation to the prevention of public nuisance licensing objective.

Premises' suitability

This application seeks to extend the hours during which late night refreshment may be provided on Fridays and Saturdays from midnight until 01:00. Our first concern with this relates to the premises itself. There is a very limited space permitting public access within this small premises, as indicated by the cross-hatched area on the premises plans:



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Such a small area might comfortably accommodate five or six customers. Should more than this number arrive at the premises the overflow will be required to wait for service outside on the public highway. A similar premises in Billet Lane, no more than 370 metres away from Top Kebabs, regularly has thirty or more customers waiting outside the premises in the early hours of the weekend. This premises also is unable to accommodate more than a handful of customers at any one time. Public nuisance issues have the potential to attend such a situation particularly when we consider the likelihood that customers arriving in the weekend's early hours will be under the influence of alcohol.

Clearly, a group of individuals under the influence of alcohol waiting for food on the street outside the premises after midnight at a location which includes residential properties is not ideal. Such a circumstance would appear not to promote the licensing objective relating to the prevention of public nuisance.

The applicant indicates that he intends to employ a door supervisor at the premises from 23:00 onwards. The fact that the applicant has identified that such a step is necessary here might indicate his belief regarding the potential level of anti-social behaviour which may result from providing hot food late at night at this premises. Should we commend the applicant for identifying the need to employ a door supervisor at this premises or should we be concerned at the fact that it is felt necessary to employ a door supervisor to control customer behaviour at a premises which does not sell alcohol?

A door supervisor is more usually required to control entry to, exit from and customer behaviour at premises on which alcohol is consumed. A door supervisor has a number of recognised duties; however, the main duty is to monitor the suitability of customers attempting to enter a given premises. This duty often extends to managing a queue outside a venue. One should recognise, however, that the authority of a door supervisor is limited to activities occurring within the premises rather than those occurring outside on the public highway. Effectively the only legal deterrent a door supervisor may wield is the refusal of entry to the premises. Door supervisors do not have the same powers as Police officers and thus have no legal authority over the behaviour of individuals on the street.

Additionally, door supervisors have a cost implication with regard to their salary. History has shown us that similar take-away food premises in this borough with an attendant premises licence condition requiring a door supervisor have often felt it necessary to dispense with the services of their door supervisor when economic needs have identified that business savings need to be made. This leaves the premises licence in breach, an identified security risk unattended and the licensing objectives not fully promoted.

Licensing policy 012 – hours

Havering's licensing policy contains a policy specific to the hours during which it is felt appropriate to provide licensable activity in given areas of the borough. Policy 012 is as follows:

The LLA is committed to protecting the amenity of residents and businesses in the vicinity of licensed premises. Applications for hours set out below in this policy will generally be granted subject to not being contrary to other policies in the statement of licensing policy. Applications for hours outside the hours listed will be considered on their merits.

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Regulated activities will normally be permitted:

- *until 11.30 pm in residential areas*
- *until 00.30 am in mixed use areas*
- *no limits in leisure areas*

This policy indicates that an application for hours which extend beyond these guideline hours will be considered on its merits. We would suggest that the application as submitted should not be considered an exception to the guidelines of licensing policy 012.

Premises which supply hot food to take away in the early hours of the morning at weekends are effectively providing hot food to individuals who have spent the preceding hours consuming alcohol. When such customers halt their journey home to obtain hot food the potential for anti-social behaviour inevitably increases. Indeed, the fact that the law sees fit to include late night refreshment establishments within the ambit of the Licensing Act 2003 (*the Act*) indicates the seriousness with which the late night supply of hot food is taken. Individuals under the influence of alcohol are now no longer dispersing from the general area. Instead they remain to wait for, and subsequently eat, their food, quite often immediately outside the premises at which the food was bought. Such a situation has been witnessed at the premises in Billet Lane mentioned previously.

If we accept that there is a finite number of late night hot food customers in a given vicinity then it might follow that competition for that customer base will intensify. While expanding a customer base is a legitimate business aim the knock-on effect is often one of '*hours-creep*'. If one premises has a premises licence to a certain hour it might seem inevitable that a competing business will seek to either match or exceed the competition's hours in order to maximise its appeal to these late night customers. We then run the risk of an entire area, over a period of time, incrementally increasing its average terminal hour. The potential result of hours-creep is that late night revellers disperse from the vicinity later and later into the morning. Anti-social behaviour issues therefore have the potential to occur later into the early hours.

Section 182 guidance to the Act – promoting the licensing objectives

Section 4(3) of the Act requires that a Licensing Authority, when carrying out its functions, has regard to its licensing policy as well as the guidance issued under s.182 of the Act. Paragraph 2.21 of the guidance indicates that, in relation to public nuisance, *the approach of licensing authorities and responsible authorities should be one of prevention*. 'Prevention', of course, requires that we act *in advance* of any nuisance occurring as you cannot *prevent* nuisance which has already taken place. Therefore we should be assessing the potential impact this application has upon the prevention of public nuisance licensing objective and take steps to mitigate that potential.

The guidance also identifies certain expectations in relation to applicants. Paragraphs 8.34 to 8.42 of the guidance to the Act address the steps required to promote the licensing objectives. A brief examination of these steps will illustrate that the applicant has not fully addressed the promotion of the licensing objectives in line with the guidance, thus making it difficult for the Licensing Authority to support the application.

8.34 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

The applicant appears not to have provided any knowledge of the local area to support the entries made in section M of the application. There is no supporting text or documentation provided to indicate the applicant's local knowledge to support the steps he intends to take to promote the licensing objectives.

8.35 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities; and
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

This application provides no evidence to support any of the expectations identified above, in particular any risk posed to the local area which may follow from this application.

8.36 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

The St Andrews ward is a special policy area addressed by Havering's licensing policy 017. While this policy might not explicitly apply to an application to vary Top Kebabs is clearly located in this special policy area. Policy 017 states:

It is the LLA's policy to refuse applications in the St Andrews ward area for pubs and bars; late night refreshment premises offering hot food and drink to take away; off licences; and premises offering facilities for music and dancing other than applications to vary hours with regard to licensing policy 012.

It appears that policy 017 refers the Licensing Authority to policy 012 when applications to vary hours, such as this one, are submitted for relevant premises. The applicant's apparent failure to identify how the area's special policy impacts on his application, any measures he will take to mitigate its impact and why he considers the application should be an exception to the policy causes this Licensing Authority some concern.

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8.40 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

The entries in section M of the application might appear to be 'a set of standard conditions' as alluded to in this guidance paragraph. Paragraph 8.40 might reasonably be seen to require that an applicant not only offers certain steps to aid the promotion of the licensing objectives but also provides reasons why *these particular steps* are appropriate for *this particular premises*. Such reasoning reassures a Licensing Authority that the applicant has a full understanding of the demands placed upon him when providing licensable activity.

Section 182 guidance to the Act – planning and building control

The guidance to the Act makes direct reference to planning legislation. Paragraph 13.55 states in part that *licensing committees are not bound by decisions made by a planning committee, and vice versa*. Paragraph 13.56, however, states the following:

13.56 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

Top Kebabs' planning permission P1294.08 allows the premises to remain open to the public until midnight throughout the week. While the Licensing Authority is empowered to grant licensing hours beyond those the Planning Authority deemed suitable such a situation might send a confusing message. If the Licensing Sub-Committee were to grant a terminal hour beyond that permitted by P1294.08 it might be interpreted that one department of the local authority is giving tacit permission to the applicant to ignore the legal requirements identified by another department.

As we are aware Havering has six values to which we, as a local authority, must aspire. The first of these values requires that we recognise that we are all part of *One Council*. This value goes on to state:

We must always act as one Council. In the eyes of our customers we are a unified organisation and our reputation is shaped by every department, team and individual across Havering... We must always present one face to our customers.

Given this requirement we suggest that due consideration is given to Top Kebabs' extant planning permission and, for consistency's sake, the premises' licensing hours are not extended beyond its planning hours.

Licensing policy 015 – premises' compliance history

Based upon Havering's licensing policy 015 an application such as this should also be considered in the light of the applicant's compliance history in relation to the provisions of the current licence. Licensing policy 015 states:

In considering applications for new licences or variations to existing licences and licence reviews following the receipt of relevant representations, the LLA will take the matters listed below into account. These criteria will apply in different ways to different types of premises and licensable activities in the following order:

- *the location of the premises and character of the area*
- *the views of responsible authorities*
- *the views of interested parties*
- *past compliance history of current management*
- *the proposed hours of operation*

Since 2nd November 2011 this Licensing Authority has had to provide four written warnings to the applicant based upon his failure to comply with the terms of his premises licence, the most recent being given on 18th March 2013. Copies of these warnings are provided for reference. This most recent written warning was based upon an incident wherein late night refreshment was witnessed to be provided to customers at 01:45, i.e. an hour and 45 minutes after the current terminal hour and *45 minutes later than the terminal hour sought in this application.*

It may be reasoned that this application is the applicant's attempt to legitimise operating outside those hours currently permitted. It should also be recognised that the premises' staff appear quite prepared to ignore the terminal hours of this premises licence when it is felt appropriate. The question this must inevitably raise is that if terminal hour A is repeatedly ignored, why would terminal hour B not be similarly disregarded? Given that customers were seen to recently purchase hot food from the premises at 01:45 one might reasonably question the applicant's commitment to comply with a 01:00 terminal hour.

This model of repeat offending suggests that, if past history is an indication, the pattern has the potential to continue. The result of this is that the actual time at which late night customers disperse from Hornchurch town centre having attended this premises would likely be later than any terminal hour the Licensing Sub-Committee may see fit to impose.

We understand that the applicant has other outlets at which he operates and therefore is not able to be physically present at all of his premises all the time. We are prepared to accept the possibility that the previous occasions when the premises licence terminal hours were disregarded were on occasions when the applicant may not have been present at the premises. If this is the case, then given the number of warnings provided to the applicant during the short life of this licence, this Licensing Authority is not sufficiently reassured of the applicant's managerial control over his staff during the periods he is absent from the premises.

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Based upon our concerns detailed above this Licensing Authority is not in a position to be able to support this application. In normal circumstances we would not be opposed to an application which is in accordance with the provisions identified in Havering's licensing policy 012; however, this premises' current planning permission requires that it is closed to the public at midnight. In line with our obligations under Havering's 'values' system we would therefore be in a position to support an application until midnight only.

I hope this makes our position clear.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Jones', with a small horizontal line at the end.

Paul Jones
Licensing Officer



Public Protection
Housing & Public Protection
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

Mr Abdul Sabur
Pizza Top
185B High Street
Hornchurch
RM11 3XS

Telephone: 01708 432692
Fax: 01708 432554
email: paul.jones@havering.gov.uk
Textphone ☎: 01708 433175

Date: 2nd November 2011

My Reference: PJJ/028361

Dear Sir/Madam

Licensing Act 2003
Top Kebabs – Late night refreshment

On 28th October 2011 I observed your premises was open after 23:00hrs. This is in line with my enforcement duties as Havering's Licensing Officer for the Hornchurch area. I would like to make you aware that the supply of hot food after 23:00hrs is a licensable activity under this Act and is known as 'late night refreshment'. Late night refreshment is the supply of hot food at any time between 23:00hrs and 05:00hrs the day following. A similar set of circumstances occurred at this premises at this time last year.

Should you wish to provide late night refreshment you will need a licence to do so. This licence is called a premises licence. I have enclosed the appropriate application form for you to apply for a premises licence.

If you do not wish to apply for a premises licence you should cease the supply of hot food at 23:00hrs and close your shop to customers at this time. **Until such times as a premises licence is in force at your premises you may not provide late night refreshment from there.**

If you supply late night refreshment without a premises licence being in force you will be committing a criminal offence contrary to s.136 of this Act and as such will render yourself liable to enforcement action. This action may ultimately take the form of a prosecution against you.

If you require further clarification regarding the above or the application form please do not hesitate to contact me.

Yours faithfully

COPY

Paul Jones
Licensing Officer

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Havering
LONDON BOROUGH

Public Protection
Housing & Public Protection
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

Mr Abdul Sabur
c/o Top Kebabs
185b High Street
Hornchurch
RM11 3XS

Telephone: 01708 432692
Fax: 01708 432554
email:paul.jones@havering.gov.uk
Textphone ☎: 01708 433175

Date: 10th January 2012

My Reference: PJJ/028361

Dear Mr Sabur

Licensing Act 2003
Premises licence no. 10892
Formal Warning
Top Kebabs 185b High Street Hornchurch RM11 3XS

On the evening of Friday 6th January 2012, leading into Saturday 7th January 2012, I observed your premises from 00:25 to 00:50. At 00:25 I noted that there were a number of male customers in your premises while their female counterparts waited outside. I observed the premises as your staff served these customers with kebabs. These customers remained outside your premises for a further twenty minutes or so while they ate the hot food that had been supplied to them at 00:30 from your premises.

Your premises licence, which was granted less than one month ago, permits late night refreshment to be supplied at your premises until midnight while the shop must close at the same time. This means that your shop must be empty of customers and hot food supplies must cease at midnight. If you provide late night refreshment after this time you will be committing a criminal offence contrary to s.136(1) of this Act and as such render yourself liable to prosecution.

Please be advised that enforcement officers from this borough are required to monitor licensed premises such as yours. As the licence holder you should familiarise yourself with the restrictions imposed by your licence and adhere to its provisions. Please ensure that you do not commit further offences at this premises.

If you require further clarification please do not hesitate to contact me.

Yours faithfully

COPY

Paul Jones
Licensing Officer



Havering
LONDON BOROUGH

Public Protection
Housing & Public Protection
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

Mr Abdul Sabur
c/o Top Kebabs
185b High Street
Hornchurch
RM11 3XS

Telephone: 01708 432692
Fax: 01708 432554
email: paul.jones@havering.gov.uk
Textphone ♯: 01708 433175

Date: 12th April 2012

My Reference: PJJ/028361

Dear Mr Sabur

Licensing Act 2003
Premises licence no. 10892
Final Formal Warning
Top Kebabs 185b High Street Hornchurch RM11 3XS

Further to my earlier warning letter of 10th January 2012 I note that the following incident occurred.

At 00:15hrs on 7th April 2012 I observed your premises and noted that three customers were in the shop at this time, even though the premises licence detailed above requires you to vacate customers by 00:00. At 00:17 one male customer left the premises in possession of a kebab. At 00:21 one male and one female customer left the premises in possession of a kebab. As you are aware late night refreshment must cease at the premises at 00:00. Providing late night refreshment after this time constitutes a criminal offence contrary to s.136(1).

This is my third warning to you with regard to similar matters since November 2011 and my second formal warning to you since your premises licence was granted in December 2011.

You should be aware that if the matters listed above are not addressed and the terms of your premises licence not adhered to I shall have no alternative other than to undertake further action against you. This will be likely to result in the London Borough of Havering seeking to prosecute you for offences contrary to s.136(1) of this Act. For your records I shall continue to monitor your premises to ensure compliance with your licence conditions.

If you require further clarification please do not hesitate to contact me.

Yours faithfully

Paul Jones
Licensing Officer



Havering
LONDON BOROUGH

Public Protection

Homes, Housing & Public
Protection
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

Mr A Sabur
Top Kebabs
185b High Street
Hornchurch
RM11 3XS

Telephone: 01708 432692
Fax: 01708 432554
email: paul.jones@havering.gov.uk
Textphone ☎: 01708 433175

Date: 18th March 2013

My Reference: PJJ/029731

Dear Sir/Madam

Licensing Act 2003
Premises Licence No. 10892
Formal Warning
Top Kebabs 185b High Street Hornchurch RM11 3XS

As the premises licence holder for the above premises I should like to bring to your attention a series of offences contrary to s.136 of this Act committed at your premises in the early hours of 17th March 2013.

A series of customers were admitted to the premises and provided with hot food after the terminal hour of 00:00 permitted for the provision of late night refreshment by your premises licence. I would like to remind you that the supply of hot food at Top Kebabs must cease at 00:00 each night of the week. Hot food supplied after this hour is done so illegally and renders you liable to prosecution for such offences.

Any repetition of the matters listed above is likely to result in further action being taken against you whose ultimate outcome may be for the London Borough of Havering to seek to prosecute you for these offences.

If you require further clarification please do not hesitate to contact me.

Yours faithfully


Paul Jones
Licensing Officer



Havering
LONDON BOROUGH

Simon Thelwell
Projects and Regulation Manager
Mercury House, Mercury Gardens
Romford RM1 3SL

memo

From: PLANNING CONTROL SERVICE

To: Licensing Officer
Environmental Health

Please call: Bernie Long
Telephone: 01708 432684
Fax: 01708 43690
Email: victor.long@haverling.gov.uk

My Reference: BL/

Your Reference:

Date: 9 May 2013

Representations re Application for Variation of a Premises Licence (Licensing Act 2003) at 185B High Street, Hornchurch, RM11 3XS

The London Borough of Havering's Planning Service, being a responsible authority as set out in the Licensing Act 2003, wishes to make representations against the above premises in relation to a variation to the Premises Licence.

This objection refers to the effect on residents in respect of noise and disturbance.

Relevant Planning History

P1294.08 Change of opening times to 12pm to 12 midnight Mondays to Sundays and Bank Holidays. Approved 1 September 2008 (Decision Notice attached).

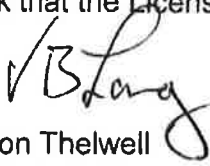
P1709.09 Change of opening times to 1am on Mondays to Fridays, Sundays and Bank Holidays and until 2am on Saturday openings. Refused 16 February 2010 (Decision Notice attached).

Appeal against P1709.09 Dismissed - appeal decision attached

The refusal of planning permission P1709.09 is based on noise and disturbance and that decision has been endorsed by the Planning Inspectorate. I draw your attention to that decision in particular paragraphs 7-11.

It should be noted that there are flats above the shops in this location as well as other residential properties close by.

I ask that the Licensing Committee consider this report as a valid representation.

A handwritten signature in black ink, appearing to read 'S Thelwell', written in a cursive style.

PP Simon Thelwell
Projects & Regulation Manager



LONDON BOROUGH OF HAVERING

TOWN AND COUNTRY PLANNING ACT 1990

AGENT

Mr M Brown
167 Corbets Tey Road
Upminster
Essex
RM14 2AX

APPLICANT

Mr A Sabur
124 Frederick Road
Rainham
Essex
RM13 8NS

APPLICATION NO: P1294.08

In pursuance of their powers as Local Planning Authority, the Council have considered your application and have decided to **GRANT PLANNING PERMISSION** for the following development :

Proposal: Change of opening times to 12pm-12 midnight Mondays-Sundays & Bank Holidays

Location: 185B High Street
Hornchurch

subject to compliance with the following condition(s):

- 1** The development to which this permission relates must be commenced not later than three years from the date of this permission.

Reason:-

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

- 2** The premises shall not be used for the purpose hereby permitted other than between the hours of 9am and midnight, and all customers shall be required to vacate the premises not later than midnight.

Reason-

To enable the Local Planning Authority to retain control and to avoid disturbance to nearby premises.

INFORMATIVES:

- 1. Reason for approval:**

The proposed development is considered to be in accordance with the aims, objectives and provisions of Policies DC61 and DC16 of the LDF Development Control Policies Development Plan Document.

2. The applicant is advised that this consent does not supersede that which was granted in respect of P1584.01 in any respect other than opening hours. As such all conditions attached to the previous consent should still be complied with in full as previously detailed in the decision for P1584.01.

Dated: 1st September 2008



Patrick Keyes
Head of Development and Building Control
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

IMPORTANT - attention is drawn to the notes overleaf

**NOTES IN CONNECTION WITH APPROVAL OF APPLICATIONS SUBJECT TO CONDITIONS
OR REFUSAL OF APPLICATIONS FOR PLANNING PERMISSION**

- (1) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or to grant permission or approval subject to conditions, an appeal may be made to the First Secretary of State at the Department for Communities and Local Government in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. However, if an enforcement notice is subsequently served relating to the same or substantially similar land and development and you want to appeal you must do so within 28 days of the service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from the Planning Inspectorate's web site, www.planning.inspectorate.gov.uk

- (2) When submitting the completed appeal form to the Planning Inspectorate, a copy should be sent to Planning, London Borough of Havering, 7th Floor Mercury House, Mercury Gardens, Romford, RM1 3SL. The First Secretary of State has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise these powers unless there are special circumstances which excuse the delay in giving notice of appeal. The First Secretary of State is not required to entertain an appeal if it appears that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements to the provisions of the development order, and to any directions given under the order. Where the decision of the local planning authority is based upon a direction from the First Secretary; it is not the practise to refuse to accept appeals solely because of this direction.
- (3) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the First Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, a purchase notice may be served on the London Borough of Havering requiring the council to purchase the land in accordance with the provision of Part VI of the Town and Country Planning Act 1990.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation where there has been an appeal or where an application has been referred to the First Secretary, and where planning permission is refused or granted subject to conditions. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.
- (5) The statutory requirements are those set out in section 79(6) of the Town and Country Planning Act 1990, namely Sections 70, 71 and 72(1) of the Act.

You are reminded that Building Regulations approval may also be required for these works. You must contact the Building Control Manager or Building Inspector to confirm if permission is required.

Note: Following a change in government legislation a fee is now required for the request for Submission of details pursuant to discharge of conditions in order to comply with the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations, which came into force from 06/04/2008. A fee of £85 per request (or £25 where the related permission was for extending or altering a dwellinghouse) will be required.



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**LONDON BOROUGH OF HAVERING
TOWN AND COUNTRY PLANNING ACT 1990**

AGENT

Mr M Brown
167 Corbets Tey Road
Upminster
Essex
RM14 2AX

APPLICANT

Mr A Sabur
c/o Agent

APPLICATION NO: P1709.09

In pursuance of their powers as Local Planning Authority, the Council have considered your application and have decided to **REFUSE PLANNING PERMISSION** for the following development

:

Proposal: Change of opening times to 1am on Mondays - Fridays, Sundays and Bank Holidays and until 2am on Saturday openings

Location: 185B High Street
Hornchurch

The above decision is based on the details in drawing(s):

Site Location

for the following reason(s):

- 1 The proposed extended opening hours would, due to their extension beyond midnight, result in additional noise and disturbance adversely affecting the amenities of adjoining residential occupiers contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document.

Dated: 16th February 2010



**Patrick Keyes
Head of Development and Building Control
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL**

IMPORTANT - attention is drawn to the notes overleaf

**NOTES IN CONNECTION WITH APPROVAL OF APPLICATIONS SUBJECT TO CONDITIONS
OR REFUSAL OF APPLICATIONS FOR PLANNING PERMISSION**

- (1) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or to grant permission or approval subject to conditions, an appeal may be made to the First Secretary of State at the Department for Communities and Local Government in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. However, if an enforcement notice is subsequently served relating to the same or substantially similar land and development and you want to appeal you must do so within 28 days of the service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from the Planning Inspectorate's web site, www.planning.inspectorate.gov.uk

- (2) When submitting the completed appeal form to the Planning Inspectorate, a copy should be sent to Planning, London Borough of Havering, 7th Floor Mercury House, Mercury Gardens, Romford, RM1 3SL. The First Secretary of State has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise these powers unless there are special circumstances which excuse the delay in giving notice of appeal. The First Secretary of State is not required to entertain an appeal if it appears that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements to the provisions of the development order, and to any directions given under the order. Where the decision of the local planning authority is based upon a direction from the First Secretary; it is not the practise to refuse to accept appeals solely because of this direction.
- (3) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the First Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, a purchase notice may be served on the London Borough of Havering requiring the council to purchase the land in accordance with the provision of Part VI of the Town and Country Planning Act 1990.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation where there has been an appeal or where an application has been referred to the First Secretary, and where planning permission is refused or granted subject to conditions. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.
- (5) The statutory requirements are those set out in section 79(6) of the Town and Country Planning Act 1990, namely Sections 70, 71 and 72(1) of the Act.

You are reminded that Building Regulations approval may also be required for these works. You must contact the Building Control Manager or Building Inspector to confirm if permission is required.



Appeal Decision

Site visit made on 2 September 2010

by **Sue Glover BA (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
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Decision date:
22 September 2010

Appeal Ref: APP/B5480/A/10/2126977
185B High Street, Hornchurch, Essex RM11 3XS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Abdul Sabur against the decision of the Council of the London Borough of Havering.
 - The application Ref P1709.09, dated 22 December 2009, was refused by notice dated 16 February 2010.
 - The application sought planning permission for the change of use to A3 (hot food take away) without complying with a new condition attached to a planning permission granted on appeal, Ref APP/B5480/A/06/2024497, dated 9 January 2007.
 - The new condition in dispute states that: The premises shall not be open to the public other than between the hours of 0900 to 2300.
 - The reason given for the condition is: In the interests of residential amenity.
-

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of nearby residents in respect of noise and disturbance.

Introduction

3. The proposal seeks a variation of a condition restricting the hours open to the public imposed on a planning permission for the change of use to A3 (hot food take away). Permission for the hot food take away was granted in 2001 subject to conditions. A new permission was granted with a new condition imposed by an appeal Inspector in 2007. The new condition allows opening of the appeal premises to the public until 2300 hours.
 4. The proposal seeks to amend the new condition to allow opening until 0100 hours the following morning on Sundays to Fridays and Bank Holidays, and until 0200 hours the following morning on Saturdays. An amendment is also sought to change the opening hours at the beginning of the day from 0900 hours to 1200 hours.
 5. The Council has confirmed that a subsequent application to the Council, Ref P1294.08, was not a variation of a condition.
-

Reasons

6. The appeal site occupies the ground floor of a 3-storey mid-terrace building within the Hornchurch Major District Centre. There is a mix of uses nearby with retail and commercial uses at ground-floor level with predominantly residential uses on the upper floors. From the information provided there are clearly a significant number of dwellings in close proximity to the appeal premises.
7. The Council indicates that this parade is not a place of extensive evening activity in comparison with other parts of the town centre. There are however 2 restaurants nearby where the operational hours are not controlled by a planning condition. There are some premises in the town centre licensed to open until 0100 hours, but on Fridays and Saturdays only.
8. Even with good management hot food take away uses and other evening activities can give rise to noise from animated customers before entering and after leaving the premises. Some noise is to be expected from evening activities within a town centre, and there are clearly economic benefits. However, the proposal seeks to extend opening hours throughout the week into the early hours of the morning at a time when general activity and ambient noise levels decrease. In the early hours of the morning residents will therefore be more susceptible to noise disturbance and might reasonably expect a quieter external environment. An objection from a nearby resident indicates that the proposal would add to late night noise and make it even more difficult to sleep at night.
9. I consider that the proposed extension of opening hours into the early morning as proposed would unacceptably harm nearby residents' living conditions in respect of noise and disturbance. The proposed variation is contrary in this respect to Policy DC61 of the *Core Strategy and Development Control Policies Development Plan Document*. The condition imposed by the previous appeal Inspector is therefore necessary.
10. I have been referred to another appeal decision in respect of a mini-cab office. The Inspector in that case considered that the mini-cab office may reduce noise and disturbance on the street. The circumstances of the hours imposed on that planning permission differ from this appeal proposal, so that they are not directly comparable.
11. Although the appellant indicates that an increase in late opening hours would improve the viability of his business and increase employment, this matter does not outweigh the significant harm that I have identified to nearby residents' living conditions. I find no harm from noise and disturbance for the opening of the appeal premises in the morning from 0900 hours.

Sue Glover

INSPECTOR



Public Protection

Mercury House, Mercury Gardens
Romford RM1 3SL

memo

Marc Gasson-Noise Specialist

To: Paul Jones-Licensing Officer

Please call: Marc Gasson

Telephone: 01708 432777

Fax: 01708 432554

email: environmental.health@havering.gov.uk

Textphone ☎: 01708 433175

My Reference : MDG/012755

Your Reference :

Date: 9th May 2013

Licensing Act 2003-Application To Vary Premises Licence Top Kebabs 185b High Street, Hornchurch, Essex

I refer to the above application and would object on the grounds of public nuisance to it being granted on the following grounds:-

1. Due to the close proximity of nearby residential properties residents are likely to experience unacceptable levels of noise from patrons entering and leaving the premises into the early hours of the morning, causing sleep disturbance.
2. The application is contrary to Licensing Policy 12 as detailed below and is likely to severely impact the amenity of nearby residents:-

Licensing Policy 012

The LLA is committed to protecting the amenity of residents and businesses in the vicinity of licensed premises. Applications for hours set out below in this policy will generally be granted subject to not being contrary to other policies in the statement of licensing policy. Applications for hours outside the hours listed will be considered on their merits.

Regulated Activities will normally be permitted:

- *until 11.30 pm in residential areas*
- *until 00.30 am in mixed use areas*
- *No limits in leisure areas.*

I trust this clarifies my position

Marc Gasson
Noise Specialist