

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Monday 27th January 2014 at 2pm
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor D Tyler (Chairman) Councillor A Lovett Councillor M Pitcher
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Emma Duncan
Premises:	Kenny's Kebabs, Feltwell
Applicant:	Mr K Demirci
Other Persons:	Mr A & Mrs J Harris Mr and Mrs J Rutterford

1. APPOINTMENT OF CHAIRMAN

AGREED: That Councillor D Tyler be appointed as Chairman for the meeting.

2. WELCOME AND APOLOGIES

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a grant of a premises application in respect of Kenny's Kebabs, Feltwell.

There were no apologies.

3. ITEMS OF URGENT BUSINESS

There were none.

4. DECLARATION OF INTERESTS

There were none.

5. TO CONSIDER THE APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF KENNY’S KEBABS, FELTWELL

The Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Emma Duncan and explained her role. The applicant and the other persons present introduced themselves.

6. THE PROCEDURE

The Legal Advisor outlined the procedure that would be followed at the hearing.

7. THE APPLICATION

The Licensing Manager presented his report and explained that a premises licence was required under the Licensing Act 2003 (the ‘Act’) for the sale of alcohol, regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am). The four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

Mr Kenan Demirci had made an application under Section 17 of the Act for the licensable activity of the provision of ‘late night refreshment’. A copy of the application had been attached at Appendix 1 and if granted would allow the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Provision of Late Night Refreshment*: (outdoors only)	Friday & Saturday	11pm – 12 Midnight
	Christmas Eve	11pm – 12 Midnight
	New Year’s Eve	11pm – 1am
Hours Premises open to the Public: (It should be noted that the hours open to the public are provided for information purposes only)	Sunday to Thursday:	5pm – 11pm
	Friday & Saturday:	5pm – 12 Midnight
	Christmas Eve	5pm – 12 Midnight
	New Year’s Eve	5pm – 1am

*Late Night Refreshment was only licensable between 11pm & 5am.

Mandatory Conditions

The premises licence, if granted would not attract any mandatory conditions.

Conditions Consistent with the Operating Schedule

The applicant had not identified any steps in the operating schedule (Box M of the application) to promote the licensing objectives.

Representation from Responsible Authorities

Section 13(4) of the Licensing Act defined the 'Responsible Authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

There had been no representations from any of the 'responsible authorities' for consideration.

Representations from 'Other Persons'

As well as responsible authorities, any other person could play a role in a number of licensing processes under the Act. This included any individual, body or business that were entitled to make representations to applications. Representations made must relate to the licensing objectives.

There had been two representations from 'other persons' to consider. Copies of these representations had been attached to the report at Appendix 2.

Notices

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. The Public Notice appeared in the Lynn News on Tuesday 31st December 2013 and should have been displayed on the premises up to and including the 16th January 2014.

Plans

A plan showing the premises had been attached at Appendix 3 and a location plan had been attached at Appendix 4.

Borough Council of King's Lynn & West Norfolk's Licensing Policy

The Licensing Manager reminded the Sub-Committee that the current Statement of Licensing Policy was approved by Full Council on the 25th November 2010 and referred to the relevant sections.

Guidance Issued Under Section 182 of the Licensing Act 2003

Under Section 4 of the Act, Licensing Authorities must have regard to guidance issued under Section 182. The current Guidance was issued by the Home Office in June 2013 and offered advice to Licensing authorities on the discharge of their functions under the Act. The Licensing Manager referred Members to the relevant sections of the Guidance.

There were no questions from any party for the Licensing Manager.

8. APPLICANT'S CASE/QUESTIONS

Mr Demirci presented his case and explained that he was requesting only an additional hour in order for him to have some time to tidy up. He explained that he was trying to build up a viable business.

The Licensing Manager referred to page 24 of the Agenda in that the applicant had not indicated any steps which he would take to promote the licensing objectives. He questioned the applicant about noise and potential smells which may emanate from his van and how he proposed to deal with any such issues. The applicant explained that there was no smells from his van and that he also had a waste bin for any waste.

In response to questions from other persons, the applicant explained that he had asked customers to respect neighbours and that he would put up signs to this effect. In response to a question in terms of electricity supply, the applicant explained that he was currently using a temporary supply but was unable to provide details as to what arrangements on a permanent basis he intended to put in place. The applicant stated that he had not otherwise given any other consideration how he might contain any noise or disturbance from customers.

In response to questions from Members of the Sub-Committee as to whether the van could be located to a different area within the car park, the applicant explained that it was not his decision but he had no objection. The Licensing Manager clarified that whilst operating under the Club's premises licence, then van could be situated anywhere within the car-park as this was within the Club's licensed area. However, Mr Demirci's application was for a specific place so he would have to make a new application should he wish to site his van in a different place.

The Legal Advisor took the opportunity to question the applicant as to whether he was willing to compromise and close at 11.30pm as opposed to midnight. The applicant indicated that he would be happy for an 11.30pm closure.

9. OTHER PERSONS CASE/QUESTIONS

The other persons presented their case and explained that they had concerns with very close proximity of the van to their property and more

importantly their bedroom window. There was concern with public safety with the vehicle partially blocking the exit from the driveway. The noise also disturbed their dogs who now barked quite a lot in order to protect their property. The van arrived one evening without any prior notice and the applicant had been aggressive. He had informed them that he had permission from the social club to park his vehicle and was there to make a living. Concerns were raised in relation to noise disturbance, particularly coming from the generator which was so noisy it could be heard above a television. Disturbance was also heard as perpex panels were taken down which were being used as a temporary rain shelter sometimes as late as midnight. There was also disturbance from clientele of the catering unit who had normally left the pub and were rowdy and used inappropriate language. There had also been incidents of urinating up against fences. All of this also resulted in disturbed sleep.

In response to questions, it was confirmed that an approach had been made to the social club who had informed them that there was no requirement to relocate the van.

10. SUMMING UP

The Licensing Manager

The Licensing Manager summed up his case and reiterated a premises licence was being applied for Late Night Refreshment from 11pm until midnight. He referred the Sub-Committee to the Borough Council's current Statement of Licensing Policy which was approved by Full Council on the 25th November 2010 and the Guidance issued under Section 182 of the Licensing Act 2003.

The Licensing Manager stated that having regard to the representations received, he requested that the Sub-Committee consider the application, the report and take such steps as it considered appropriate for the promotion of the licensing objectives. The steps were:

- a) To grant the application under the terms and conditions applied;
- b) To grant the application with conditions that the Sub-Committee considers appropriate for the promotion of the licensing objectives;
- c) To reject all or part of the application.

The Licensing Manager reminded the Sub-Committee that full reasons for their decision must be given as both the applicant and objector had a right of appeal against that decision to the Magistrates' Court.

Applicant

The applicant confirmed that he had no further comments to add.

Other Persons

In response to a query, the Licensing Manager clarified that a premises licence was only required under the Licensing Act 2003 for the sale of alcohol, regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am).

The Licensing Manager also explained that there was an option to apply for the review of the Social Club licence.

10. OUTSTANDING MATTERS

The Legal Advisor referred to the evidence provided both the applicant and the public nuisance problems that were being suffered by the other persons.

11. REACHING A DECISION

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer for administration purposes, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered no further legal advice to the Sub-Committee in relation to their decision.

12. DECISION

The Chairman read out the decision and reasons for the decision as follows:

APPLICATION

Kings Lynn and West Norfolk Borough Council, being the relevant licensing authority, received an application for a premises licence for Kennys Kebab, Feltwell Social Club, Paynes Lane, Feltwell, IP26 4BA

During the 28 day representation period, the Council received representations from the following:

RESPONSIBLE AUTHORITIES

None

OTHER PERSONS

Two letters of objection were received from 'other persons' and were attached to the report before the Licensing Sub-Committee at appendix 2.

HEARING

On 27 January 2014, a hearing was held to consider the application. The Sub-Committee determined the application with a view to promoting the four licensing objectives. It considered this application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Kings Lynn and West Norfolk Borough Council Licensing Policy
- Statutory guidance issued under the Licensing Act 2003
- The Human Rights Act

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Manager
- The Applicant
- Mr A and Mrs J Harris
- Mr J Rutterford

SUMMARY OF EVIDENCE

The Licensing Manager presented his report. In particular he drew the Panel's attention to the plan of the application site, and the location the fact that the applicant had made "n/a" responses in his application in relation to the licensing objectives.

The applicant Kenan Demirci informed the Sub-Committee that he wanted a later time so he could tidy up.

In response to questions from the Licensing Manager in relation to the licensing objectives the Applicant said that there was no smell from his van and that he had a waste bin for the waste.

In response to questions from the Other Persons the Applicant said that he had asked customers to respect neighbouring occupiers. A question was asked about electricity supply and that the Applicant was using a temporary supply but was not able to provide details about the technology that he would be using.

The Applicant also said that he would put up signs encouraging clients to respect the neighbours.

The Applicant said that he had not considered otherwise how he might deal with the nuisance arriving from customer noise and disturbance, particularly in the summer.

The persons with representations expressed their concerns/ support that the kebab van brought noise (generator, noise of packing up, children get woken up, causing residents dogs to bark, and people), nuisance (smell, litter, urinating, lack of ability to sleep, bad language, cars waiting for food with headlights shining into houses) meaning that residents could not have windows open, they found it difficult to sleep, that their children repeat the bad language that they have heard and also have seen customers urinating. They also raised concerns about public safety (the placement of the van obstructs residents vehicular access).

FINDINGS

The Sub-Committee were of the view that the applicant had provided minimal evidence of how the promotion of the licensing objectives would be achieved in his application and was not able to elaborate further.

The kebab van had been operating for a limited period of time and despite a willingness to try to compromise on location and measures to address the noise proposed by the Other Parties there appeared to be a lack of willingness on the part of the Applicant to address these issues.

The Sub-Committee considered the views of the 'other persons' and found that there was considerable evidence showing that the application was causing nuisance to residents, in particular noise and disturbance from customers and the operation of the van itself.

The Sub Committee noted the effects on the families living close by to the kebab van.

The Sub-Committee balanced the need of the applicant with the needs of other persons who made presentations.

DETERMINATION

The Sub-Committee refuses the application

RIGHT OF APPEAL

There is a right of appeal against this decision to the Magistrates' Court. An appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision. You may wish to seek independent legal advice from a solicitor or the Citizens Advice Bureau regarding this.

The Chairman thanked everybody for their attendance and contributions and declared the meeting closed.

The meeting closed at 4pm