

Crawley Borough Council

	Report No: ES/201	
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Report to Licensing Sub Committee

Grant of New Premise Licence - Best Kebab

Angela Tanner – Head of Environmental Services

- | 1. | Details of Application | Reference Documents and Guidance |
|-----|---|--|
| 1.1 | On the 17 th March 2008, Mr Mustafa Cete of 'Best Kebab' submitted an application to the Council for the grant of a premises licence in accordance with the provisions of the Licensing Act 2003, 'the Act'. | Appendix A
Application Form |
| 1.2 | 'Best Kebab' currently has a premises licence with conditions. | Appendix B
Copy of current premises licence |
| 1.3 | The premises are licensed for 'late night refreshments' subject to the provisions of the Act and attached conditions. | |
| 1.4 | Mr Cete is applying for the grant of a new premises licence for the existing established premises. | Appendix A
Copy of Application Form |
| 1.5 | The applicant is intending to promote the four 'licensing objectives' with the steps he proposes to take in the submitted 'operating schedule' (included in the attached application form). | Appendix A
Copy of Application Form |
| 1.6 | The application is for the grant of a premises licence for 'late night refreshments' only which is the supply of 'hot' food or drink to members of the public or section of the public, on or from any premises, whether for consumption on or off the premises within the hours of 11pm to 5am. | Sch 2, paragraph 1,
Licensing Act 2003 (LA03) |
| 1.7 | The proposed trading hours are as follows:-

Mon 23.00 – 02.00
Tues 23.00 – 04.30
Weds 23.00 – 02.00
Thurs 23.00 – 04.30
Fri 23.00 – 04.30
Sat 23.00 – 04.30 | Appendix A
Copy of Application Form |

Sun 23.00 - 02.00

2 Consultation

- 2.1 The application was advertised in accordance with legislation.
- 2.2 Representations made to the Council either for or against the application:

Responsible Authorities

Planning	- no comment
Building Control	- no objection
Environmental Health	- no comment
Trading Standards	- no comment
Fire & Rescue	- no comment
Child Protection	- no comment
Police	- objection

Interested Parties

As defined in Licensing Policy - no comment

- 2.3 Sussex Police as a 'responsible authority' has submitted a relevant representation in accordance with the provisions of the Act. The substance of the representation is an **objection to the grant of the proposed application** in its present form and as it **does not in the opinion of Sussex Police promote** the following **licensing objective**:-

*Appendix C
Copy of Police
'representation'.*

'Prevention of Crime and Disorder'

3 Background

- 3.1 In 2005, with the introduction of the Licensing Act 2003, a premises licence with conditions was granted as part of the above premises for the trading hours currently applicable.
- 3.2 The conditions were proposed by the applicant as a result of negotiations with Sussex Police to promote the 'Prevention of Crime & Disorder' licensing objective and were subsequently added to the issued premises licence.
- 3.3 The agreed conditions consistent with the Operating Schedule were as follows:-

*Appendix B
Copy of current premises
licence*

Operating Schedule

- (1) CCTV will continue to operate internally and externally,
- (2) Customers will be requested to behave responsibly,
- (3) Members of staff will monitor the door at all times,
- (4) No music shall be played at the premises,

- (5) Door shall be kept closed when possible,
- (6) Children under 12 shall be supervised.

Licensing Sub Committee:

- (1) The licensee shall ensure that all parts of the premises and the pavement immediately outside the premises is kept clean and free from litter to the satisfaction of the Council.
- (2) Notices shall be exhibited in prominent positions on the premises requesting patrons to protect the environment by disposing of their rubbish in the bins provided.
- (3) An adequate supply of waste receptacles for use by patrons shall be provided in positions agreed with the responsible authority and it shall be the responsibility of the licensee to empty and dispose of the collected refuse at a frequency agreed with the responsible authority.

4 Staffing, Financial and Legal Implications

- 4.1 There are no extra staffing or financial implications to the Council, save for those laid out in Part 10 of the Information Pack in respect of possible appeals. *Information Pack: Part 10 (General)*
- 4.2 The Council is required to consider the impact any decision may have on an individual's Human Rights. *Information Pack: Part 10 (General)*
- 4.3 The Council is required to consider the impact any decision may have on crime and disorder in the area (Section 17, Crime and Disorder Act, 1998). *Information Pack; Part 10 (General)*

5 Community Strategy and Corporate Plan:

- 5.1 See part 10 (General); Information pack. *Information Pack: Part 10*

6 Considerations to be Addressed in Accordance with Licensing Guidance issued under section 182 of the Licensing Act 2003

- 6.1 Members must give due consideration to the merits of each individual case. Attention is drawn to the following sections of the 'Members' Information Pack';

Council's Licensing Policy,
 LACORS Guidance,
 CBC Hearing Procedures,
 Premises Guidance,
 Licensing Act (premises),
 Regulations (premises),
 Conditions (premises).

*Part 1
 Part 2
 Part 2
 Part 3
 Part 3
 Part 3
 Part 8 & 9*

- 6.2 Examples of conditions which may assist in the promotion of this licensing objective can be found in the information pack. *Information Pack:
Part 1, Policy
Part 9, conditions*
- 6.3 **Please note:** *Appendix A
(Application Form -Part B)
'Operating Schedule'*
- Applicants are expected to conduct a thorough risk assessment with regards to the licensing objectives when preparing their applications. Any risk assessment to identify necessary measures should consider the individual circumstances of the premises (including local knowledge) and take into account a range of factors including:
- the nature and style of the venue;
 - the activities being conducted there;
 - the location; and
 - the anticipated clientele.
- 6.4 In preparing 'Operating Schedules', the Licensing Authority expects that applicants should have regard to statements of licensing policy published by this authority for the Crawley area. *CBC Alcohol Licensing Policy*
- 6.5 It is also expected that applicants will seek the views of key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority safety officers and local community groups might be consulted. *CBC Alcohol Licensing Policy*
- 6.6 Members will need to incorporate the provisions of the operating schedule into any licence granted by imposing on the licence the provisions of the operating schedule as conditions. However, if Members believe that it is necessary to modify the provisions of the operating schedule in order to ensure that the licensing objectives are promoted, appropriate alternative conditions may be drafted and imposed.
- 6.7 If Members believe that the operating schedule fails to promote the licensing objectives in some way, conditions not covered by the provisions of the operating schedule may be drafted and inserted. Members may also exclude elements of the operating schedule which do not promote the licensing objectives by the imposition of negative conditions or conditions otherwise appropriately drafted.
- 6.8 Council Policy states that conditions will be used if they can control issues that directly impact on the behaviour of those under the licensee's direction, when on his premises or in the immediate vicinity of the premises as they seek entry or leave. The Conditions laid down in Annex D of the Statutory Guidance will be used as a pool of conditions in respect of General Management Controls on Crime and Disorder. *CBC Alcohol Licensing Policy
2.14*
- 6.9 The Licensing Authority will look to the Police as the main source of advice on these matters and this advice will be given considerable weight. *CBC Alcohol Licensing Policy
2.14*

- 6.10 Members are reminded, however, that if conditions which do not precisely mirror the operating schedule are to be imposed, the Members must satisfy themselves that appropriate evidence exists to justify the imposition of these conditions.
- 6.11 Section 4 of the 2003 Act provides that in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.
- 6.12 However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.
- 6.13 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

6.14 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

*Section 182 Statutory
Guidance
1.15*

6.15 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate such as door supervisors, CCTV etc.

*Section 182 Statutory
Guidance
1.27*

6.15.1 **Door supervisors**

Conditions relating to the provision of door supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out individuals excluded by court bans or by the licence holder;
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining orderly queuing outside venues.

*Section 182 Statutory
Guidance*

Annex D

Where the presence of door supervisors conducting security activities is to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority,

conditions may also need to deal with:

- the number of supervisors;
- the displaying of name badges;
- the carrying of proof of registration;
- where, and at what times, they should be stationed on the premises; and
- whether at least one female supervisor should be available (for example, if female customers are to be given body searches).

Door supervisors also have a role to play in ensuring public safety.

6.15.2 **CCTV**

*Section 182 Statutory
Guidance
Annex D*

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

6.16 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.

*Section 182 Statutory
Guidance
1.28*

6.17 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area.

*Section 182 Statutory
Guidance
1.29*

6.18 The Government's expectation is that the police will have a key role in undertaking tasks that include:

*Statutory Guidance
S182
2.2*

- Developing a constructive working relationship with designated premises supervisors and other managers of premises, including premises providing late night refreshment; and
- Working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and antisocial behaviour.

6.19 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives.

*Statutory Guidance
S182
2.4*

6.20 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally.

*Section 182 Statutory
Guidance
2.6*

- 6.21 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed. *Section 182 Statutory Guidance 2.7*
- 6.22 In preparing an operating schedule, the Secretary of State expects applicants to have had regard to the statement of licensing policy for their area. They should also be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. *Section 182 Statutory Guidance 8.28*
- 6.23 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises. *Section 182 Statutory Guidance 8.31*
- 6.24 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.
- Section 182 Statutory Guidance 9.25*
- 6.25 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs should carry out before making their application for a premises licence. *Section 182 Statutory Guidance 10.7*
- 6.26 Conditions which relate to the four licensing objectives could be used where necessary and appropriate to the particular circumstances of an individually licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances. *Section 182 Statutory Guidance 10.5*
- 6.27 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. *Section 182 Statutory Guidance 10.13*
- 6.28 Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go *Section 182 Statutory Guidance 10.14*

further than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.

6.29 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

*Section 182 Statutory
Guidance
10.20*

6.30 If members consider a door supervisory presence to be necessary the following will apply:-

Mandatory conditions will apply to this application;

Section 21; **Door Supervisors**

“(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority”.

7 Recommendations

7.1 Grant the application subject to conditions which are consistent with the operating schedule accompanying the application, and any relevant mandatory conditions, or,

*Appendix A
(Application Form -Part B)
'Operating Schedule'
Section 18(2)*

7.2 Grant the application subject to conditions which are consistent with the operating schedule (and any relevant mandatory conditions) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, or,

*Appendix A
(Application Form -Part B)
'Operating Schedule'
Information Pack
Part 1, Policy
Part 9, (conditions)
Section 18(4)(a)*

7.3 Do either of the above, but exclude from the scope of the licence any of the licensable activities to which the application relates, or,

*Appendix A
(Application Form -Part B)
'Operating Schedule'*

7.4 Reject the application, giving reasons for doing so.

*Section 18(4)(b)
Section 18(4)(d)*

Background Papers
All associated paper work regarding this application.
The information pack
Statutory Guidance
Statement of Policy

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