

Crawley Borough Council

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Report to Licensing Sub Committee

14 April 2010

Application to vary the Premises Licence for

'Kebabish'

94 High Street

Crawley

Angela Tanner

Head of Planning and Environmental Services

1. Details of Application

*Reference Documents
and Guidance*

- 1.1 On the 28th January 2010, Mr Hamavon Khan, the premises licence holder for Kebabish, 94 high Street, Crawley, submitted an application to the Council for the variation of an existing licence for the above named premises in accordance with the provisions of the Licensing Act 2003 ('the Act').

*Appendix A
Application Form*

- 1.2 The application is for a change to the existing plans and an extension of the licensing hours as follows:

*Appendix A
Application Form
Operating Schedule
Section P*

Current hours

Provision of late night refreshments: Mon to Sun 23:00 to 00:30
Opening hours: Mon to Sun 07:00 to 01:00

The application seeks to amend the hours to:

Provision of late night refreshments: Mon to Sun 23:00 to 03:30
Opening hours: Mon to Sun 07:00 to 04:00

The applicant states he intends to promote the four 'licensing objectives' with the steps he proposes in the submitted 'operating schedule' (part of the application form which is at Appendix A).

- 1.3 A copy of the existing premises licence and plans are attached for consideration.

*Appendix B
Existing premises licence
& plans*

2. Consultation

- 2.1 The application was advertised in accordance with legislation and as a result of the consultation process the following responses were submitted to the Council;-

*Appendix C
Copy of letter of
representation*

- (1) Sussex Police submitted a relevant representation objecting to the grant of the application.
- (2) Planning submitted response stating there was no comment on the application. As this response did not refer to the likely effect of the grant of the application on the promotion of the licensing objectives it is not a relevant representation.
- (3) Building Control submitted a response stating there was no objection to the grant of the application. As this response did not refer to the likely effect of the grant of the application on the promotion of the licensing objectives it is not a relevant representation.

No representations were received from the following:

Environmental Health
Trading Standards
Fire & Rescue
Child Protection
Any other interested party

- 2.2 The relevant representation submitted by Sussex Police is in respect of the impact of the grant of the application on the following Licensing Objectives:

*Appendix C
Copy of the relevant
representation of Sussex
Police*

- Prevention of crime & disorder
- Public safety
- Prevention of public nuisance

The concerns expressed by the Police are in regard to existing crime and disorder incidents on the High Street in Crawley and the potential for these to increase if the application were to be granted. The representation also includes conditions which the Police sought to agree with the applicant.

3. Reason for hearing

- 3.1 An application to vary a premises licence must be made to the relevant licensing authority and be accompanied by an operating schedule, a plan of the premises to which the application relates in the prescribed form and, if the licensable activities include the supply of alcohol, by a form of consent given by the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor. *Licensing Act 2003 Section 34*
- 3.2 Where the Licensing Authority receives an application to vary a premises licence and no relevant representations are made, they must grant the licence subject only to such conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions. *Licensing Act 2003 Section 35*
- 3.3 Where the Licensing Authority receives an application to vary a premises licence and relevant representations are made the licensing authority must hold a hearing to consider them, unless the authority, the applicant and each person who has made a representation agree that a hearing is unnecessary and, having regard to the representations, take such of the steps (if any) as it considers necessary for the promotion of the licensing objectives. *Licensing Act 2003 Section 35*
- 3.4 The steps so mentioned are;-
(a) to modify the conditions of the licence
(b) to reject the whole or part of the application. *Licensing Act 2003 Section 35*

4. Statutory considerations and Guidance issued by government

- 4.1 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 ('Guidance'). The most recent Guidance is dated January 2010. The requirement is therefore binding on all licensing authorities to that extent. *S182 Guidance Para 9.24*
- 4.2 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. The following paragraphs contain extracts from the Guidance where indicated in the right column. *S182 Guidance Para 9.25*
- 4.3 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute. *S182 Guidance Para 10.11*

- 4.4 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives. *S182 Guidance Para 10.12*
- 4.5 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. *S182 Guidance Para 10.13*
- 4.6 Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties. For example, employers and self-employed people are required by the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) to assess the risks to their workers and any others (including members of the public visiting the premises) who may be affected by their business and identify measures needed to avoid or control risks. Conditions enforcing these requirements are therefore unnecessary. *S182 Guidance Para 10.15*
- 4.7 Similarly, licensing authorities should not seek to impose fire safety conditions that may duplicate any requirements or prohibitions that could be imposed under the Regulatory Reform (Fire Safety) Order 2005. *S182 Guidance Para 10.16*
- 4.8 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises. *S182 Guidance Para 10.19*
- 4.9 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. *S182 Guidance Para 10.20*
- 4.10 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*

4.11 **Door supervisors**

*Section 182 Statutory
Guidance*

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.

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).

4.12 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

4.13 **CCTV**

*Section 182 Statutory
Guidance*

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.

4.14 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*

- 4.15 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
- 4.16 The Government's expectation is that the police will have a key role in undertaking the following tasks: *Statutory Guidance*
S182
2.2
- Premises providing late night refreshment; working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and antisocial behaviour.
- 4.17 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
- 4.18 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
- 4.19 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
- 4.20 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 on the steps that are necessary for the promotion of the licensing objectives. *Section 182 Statutory Guidance*
8.41
- 4.21 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*
8.44
- 4.22 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: *Section 182 Statutory Guidance*
9.25
- the steps that are necessary to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - the Guidance;
 - its own statement of licensing policy.

- 4.22.1 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*
- 4.23 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*
- 4.24 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*
- 4.25 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 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. *Section 182 Statutory Guidance 10.14*
- 4.26 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.
- 4.27 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.

5. Policy considerations

- 5.1 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*

5.2	The aim of Crawley Borough Council's Licensing Policy 2008 - 2011 ('the Policy') is to promote the licensing objectives set out in the Act whilst securing the safety and amenity of residential communities and facilitating a sustainable entertainment and cultural industry.	<i>CBC Alcohol Licensing Policy</i> 1.2
5.2.1	The overriding philosophy of the licensing regime is that there is a presumption that a licence will be granted unless there are compelling reasons to refuse the licence.	<i>CBC Alcohol Licensing Policy</i> 1.2
5.2.2	The Licensing Authority will primarily focus on the direct impact the activities taking place at licensed premises will have on members of the public living, working and engaging in normal activity in the area concerned. Licensing law is not a mechanism for the general control of anti social behaviour by individuals once they are beyond the reasonable control of the licence holder.	<i>CBC Alcohol Licensing Policy</i> 2.4
5.2.3	The Policy is also intended to ensure that the provision of additional opportunities for licensable activities is matched by additional measures enabling the police and responsible authorities to act promptly to maintain public order and safety.	<i>CBC Alcohol Licensing Policy</i> 2.7
5.2.4	The key controls in respect of preventing crime and disorder arise from good operational planning and good management of activities at the premises	<i>CBC Alcohol Licensing Policy</i> 2.10
5.2.5	The Licensing Authority recognises that the public safety objective is concerned with the physical safety of the people using the relevant premises and not public health which is dealt with in other legislation.	<i>CBC Alcohol Licensing Policy</i> 2.27 <i>s182 Guidance para 2.19</i>
5.2.6	There is no statutory definition of Public Nuisance. The Licensing Authority will therefore, need to make judgements about what constitutes public nuisance and define the necessary controls. To decide this, Members will focus on whether impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity are disproportionate and unreasonable.	<i>CBC Alcohol Licensing Policy</i> 2.33
5.3	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: <ul style="list-style-type: none"> • the nature and style of the venue; • the activities being conducted there; • the location; and • the anticipated clientele 	<i>Appendix A</i> <i>(Application Form -Part B) 'Operating Schedule'</i>
5.4	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.	<i>CBC Alcohol Licensing Policy</i>

- 5.4.1 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*
- 5.5 Examples of conditions which may assist in the promotion of the licensing objectives can be found in the information pack. *Information Pack: Part 1, Policy Part 9, conditions*
- 5.6 The 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*
- 5.7 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*
- 5.8 However, it is recognised, following government recommendation in light of national research, that longer licensing hours with regards to the sale of alcohol may be important to ensure that the concentrations of customers leaving premises simultaneously are avoided. *CBC Alcohol Licensing Policy 2.92*
- 5.9 The Licensing Authority general principle will be to support later opening so that customers leave for natural reasons slowly over a longer period. This will prevent any artificial concentration. Specific issues will be dealt with by review of premises licence following representations based on evidence. *CBC Alcohol Licensing Policy 2.95*

6. Staffing, Financial and Legal Implications

- 6.1 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)*
- 6.2 The Council is required to consider the impact any decision may have on an individual's Human Rights. *Information Pack: Part 10 (General)*
- 6.3 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).

7. Community Strategy and Corporate Plan;

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

8. Recommendations

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|-----|--|---|
| 8.1 | Having regard to the relevant representation by Sussex Police, to the extent that it relates to at least one or more of the four licensing objectives, Members may take such of the following steps mentioned (if any) as it considers necessary for the promotion of the licensing objectives;- | <i>Licensing Act 2003
s35(3)</i> |
| 8.2 | To modify the conditions of the licence. | <i>Licensing Act 2003
s35(4)(a)</i> |
| 8.3 | To reject the whole or part of the application. | <i>Licensing Act 2003
s35(4)(b)</i> |

Background Papers

All associated paper work regarding this application
The information pack
Statutory Guidance January 2010
Crawley Borough Council Licensing Policy 2008 - 2011

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