

Committee: Licensing Sub-committee	Date: 20/04/2009	Classification Unclassified	Report No. LSC072/809	Agenda Item No. 5.1
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Report of: Colin Perrins Head of Trading Standards and Environmental Health (Commercial)	Title: Licensing Act 2003 Application for a variation of the Premises Licence for Kivre Food Centre, 497-499 Cambridge Heath Road, E2 9BU
Originating Officer: Nick Kemp Licensing Officer	Ward affected: Bethnal Green North

1.0 Summary

- Applicant: **Mr Ibrahim Bagcih & Mr Hussein Ordu**
- 2.0 Name and Address of Premises: **Kivre Food Centre, 497-499 Cambridge Heath Road, E2 9BU**
- Licence sought: **Variation of premises licence under the Licensing Act 2003**
- To amend the hours for the provision of licensable activities**
- Representations: **Environmental Protection Metropolitan Police**

3.0 Recommendations

- 3.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
File Only		Nick Kemp 020 7364 7446

4.0 Background

- 4.1 This is an application for a variation of the premises licence for Kivre Food Centre, 497-499 Cambridge Heath Road, E2 9BU by extending the times for the supply of alcohol. They are not licensed for any other activities.
- 4.2 A copy of the existing licence is enclosed as **Appendix 1**.

Current licensing times.

The sale by retail of alcohol

Monday to Sunday 10:00 – 23:00

Hours premises are open to the public:

Monday to Sunday from 06:00 – 01:00.

- 4.3 A copy of the application is enclosed as **Appendix 2**.
- 4.4 The applicant has described the nature of the variation as follows:
- An existing shop with a premises licence.

The hours that have been applied for are as follows:-

Supply of alcohol

Monday to Sunday: 24 hours pre day

Hours premises are open to the public:

Monday to Sunday: 24 hours per day.

- 4.5 A map showing the situation of premises in the local area is included in **Appendix 3**.

5.0 Licensing Policy and Government Advice

- 5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The policy was adopted by the Full Council on the 8 December 2004.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 5.3 The Government Minister, the Secretary of State for Culture, Media and Sport has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.culture.gov.uk. It was substantially revised on the 28 June 2007.
- 5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

6.0 Representations

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing.
- 6.2 Interested party as defined in Section 13 (3) of the Licensing Act 2003 is limited to persons living in the vicinity of the premises, their representatives and local businesses in the vicinity of the premises and their representatives. Essentially, the interested party making the representation should show by what they say that they, or those they represent are sufficiently close to be personally affected by the application.
- 6.3 Only a responsible authority or an interested party can make a representation. Both of these terms are defined by statute, in Section 13 of the Licensing Act 2003.
- 6.4 There are two tests for an interested party and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.5 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.6 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Interested parties and their representatives have to meet this test.

- 6.7 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.8 Section 182 Advice by the DCMS concerning relevant, vexatious and frivolous representations is attached as **Appendix 5**.
- 6.9 The representation in this report has been considered by the relevant officer (Team Leader Licensing) and determined to have met the requirements of the Licensing Act 2003
- 6.10 All of the responsible authorities have been consulted about this application. They are as follows:
- The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Environmental Protection
 - Trading Standards
 - Child Protection
- 6.11 This hearing is required by the Licensing Act 2003, because relevant representations have been made by:
Environmental Protection – who request conditions
Metropolitan Police – who request conditions
- Please see **Appendix 4**
- 6.12 The application was required to be advertised in a local newspaper and by a blue poster. In addition the licensing section consulted on a 40 m basis.
- 6.13 Only objections that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 6.14 Essentially, Environmental Protection and the resident oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly:
- the prevention of public nuisance
- 6.15 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

7.0 Licensing Officer Comments

7.1 The Licensing Section is not a responsible authority and therefore has no ability to make any relevant representations. The following therefore is intended simply to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

7.2 Guidance issued under section 182 of the licensing Act 2003

- ❖ As stated in the guidance it is “provided for licensing authorities carrying out their functions.” It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.6). Also “so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.” When doing so licensing authorities will need to give full reasons for their actions (1.7).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.10)
- ❖ Conditions may not be imposed for the purpose other than the licensing objectives.
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
- ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
- ❖ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. (S. 10.24).
- ❖ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount 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.” (10.20)

- 7.3 The Licensing Act 2003 permits children of any age to be on the premises providing they are accompanied by an adult. It is not necessary to make this a condition.
- 7.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 7.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 7.6 The Government has advised that “In the context of preventing public nuisance it is again essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by anti-social behaviour of customers once they are beyond the control of the licence holder or premises management cannot be justified and will not serve the licensing objectives.” (2.38)
- 7.7 The Council’s licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

8.0 Exemptions

- 8.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 8.2 Acts of religious worship, wherever performed are not licensable.
- 8.3 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any “noise nuisance.”
- 8.4 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08 00 hrs and midnight, no additional conditions should be set relating to the music.
- 8.5 Section 177 can be disapplied on a licence review if it is proportionate to do so.

9.0 Legal Comments

9.1 The Council's legal officer will give advice at the hearing.

10.0 Finance Comments

10.1 There are no financial implications in this report.

Appendices

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| Appendix 1 | A copy of the existing premises licence |
| Appendix 2 | A copy of the variation application |
| Appendix 3 | Maps of the area |
| Appendix 4 | List of objectors |
| Appendix 5 | Details of representations by Environmental Protection |
| Appendix 6 | Details of representations by Metropolitan Police |
| Appendix 7 | Section 182 Advice by the DCMS concerning relevant, vexatious and frivolous representations |
| Appendix 8 | Licensing Officer comments on Anti Social Behaviour from patrons leaving the premises |
| Appendix 9 | Licensing Officer comments on Access and Egress Problems |
| Appendix 10 | Licensing Officer comments on Planning |
| Appendix 11 | Licensing Policy relating to hours of trading |