

**Report of the Head of Elections, Licensing and Registration**

**Report to the Licensing Sub Committee**

**Date: 17th April 2018**

**Subject: Application to vary a premises licence held by Best Kebab 48 & 50 Westgate, Otley, LS21 3AS**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Otley and Yeadon		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

**Summary of main issues**

This is an application to vary a premises licence, made by Mr Sajid Khan, for Best Kebab 48 & 50 Westgate, Otley, LS21 3AS.

Responsible authorities and Ward Members have been notified of this application.

The application has attracted representations from responsible authorities.

## **1 Purpose of this report**

- 1.1 To advise Members of an application made under section 34 of the Licensing Act 2003 ("the Act") to vary a premises licence in respect of the above mentioned premises.
- 1.2 Members are required to consider this application due to the receipt of representations.

## **2 History of premises**

- 2.1 On the 1<sup>st</sup> February 2016, an application was received in the Licensing Office for the grant of a premises licence for the sale of late night refreshment up to 2 am on weekends. The application attracted representations from responsible authorities and other persons and a ward councilor and was scheduled for hearing before the Licensing Sub Committee where the decision was made to grant the licence, adding the agreed conditions and reducing the hours applied for to up to 00:30 on weekends. The licence was granted in March 2016.

Complaints from residents were received in May 2017 alleging that the premises were repeatedly exceeding their permitted hours up to 2am on weekends.

Warning letters were sent to the premises and the licence holder's home address, the licence holder was advised that the premises would be monitored for compliance.

In July 2017, officers from Entertainment Licensing carried out a covert Test Purchase of hot food, this was 20 minutes after the last permitted sale of hot food. Warning letters were again sent to the licence holder at the premises and his home address.

On the 5<sup>th</sup> November 2017 Police officers attended a large disturbance outside the shop at 2 am. The officers reported that the shop was still open at that time, this is 90 minutes after the last permitted sale of hot food.

A further warning letter was sent to the licence holder at the premises and his home address.

An enforcement officer visited the premises on 9<sup>th</sup> November 2017 and spoke to the licence holder. They discussed the recent incident and the officer requested to view the CCTV system (conditions 1-3) on the premises licence. Mr Khan stated that he had not installed the CCTV system that he had agreed to install at the Licensing Sub Committee hearing on the 29<sup>th</sup> March 2016, as a result no footage was available to assist police in identifying persons involved in the incident.

On the 15<sup>th</sup> November 2017, a Police Community Support Officer witnessed the shop operating at 00:40 hours, last permitted sale of hot food that day is midnight.

On the 5<sup>th</sup> December 2017, Mr Khan telephoned licensing advising that he had been unable to find anyone to install CCTV prior to Christmas. He was advised that he was continuing to breach CCTV conditions, he was also advised that Police had witnessed breaches of hours on the 15<sup>th</sup> November 2017.

On the 12<sup>th</sup> December 2017, two x TEN (temporary event notice) applications were received from the licence holder. The first application was for the weekend before Christmas and the second was for the weekend before and including New Year's Day. As the first application was not received 10 working days before the date of the event, the first ten was deemed a late ten. A representation was received from West Yorkshire Police, which meant that the Ten had to be rejected and on 14<sup>th</sup> December 2017, a Counter Notice was issued to the licence holder.

The 2<sup>nd</sup> Ten for the weekend of New Year's Eve was also subject to a representation from West Yorkshire Police, due to the recent disorder at the premises and because the premises were still failing to comply with the conditions relating to CCTV. As a result, Mr Khan emailed Licensing withdrawing this Ten, the email was received on the 15<sup>th</sup> December 2017.

Entertainment Licensing were advised by West Yorkshire Police that the premises had exceeded their permitted hours and had chosen to disregard the Counter Notice on the 23<sup>rd</sup> and 24<sup>th</sup> December 2017. Entertainment Licensing were also advised by West Yorkshire Police that the premises had exceeded their hours up to 01:45 on New Year's Day, the normal hours for hot food is midnight on that day.

On the 5<sup>th</sup> February 2018, the premises licence holder and his solicitor attended a meeting at Otley Police Station, where Council and Police Licensing Officers advised Mr Khan of his breaches of licence. The premises licence holder advised the meeting that he had installed the CCTV system.

On the 16<sup>th</sup> February 2018, a LCC enforcement officer visited Best Kebab and requested to view the CCTV to check compliance with conditions 1-3 of the licence. The premises licence holder admitted that only the cameras were fitted and there was no hard drive or monitor to view footage.

The Licensing Authority did consider the option of prosecution via the courts, but it was felt that due to the repeated breaches of licensed hours and conditions, a review was the preferred option with the recommendation to revoke the existing licence.

A review was submitted on the 13<sup>th</sup> March 2018.

2.2 A copy of the existing licence is attached at Appendix A.

### **3 The application**

3.1 The applicant is Mr Sajid Khan

3.2 Briefly the application is to:

- Add an additional half hour onto the hours for sale of late night refreshment on a Friday and Saturday night.

### **4 The operating schedule**

4.1 The applicant considers that the existing measures are sufficient to promote the licensing objectives and no further measures have been offered.

## **5 Location**

- 5.1 A map which identifies the location of this premises is attached at Appendix B.

## **6 Representations**

- 6.1 Under the Act representations can be received from responsible authorities or other persons. Representations must be relevant and, in the case of another person, must not be frivolous or vexatious.

### Representations from Responsible Authorities

- 6.2 Representations have been received from The Licensing Authority, West Yorkshire Police and The Environmental Protection Team in their capacity as responsible authorities. A copy of all the representation may be found at Appendix C.

### Other representations

- 6.3 There are no other representations.
- 6.4 Members are directed to paragraphs 7.51 to 7.54 of the Statement of Licensing Policy which provides examples of how an application may be considered exceptional and the matters that the council would not normally take into consideration.

## **7 Licensing hours**

- 7.1 Members are directed to paragraphs 6.8 to 6.15 for the Statement of Licensing Policy which states the criteria that will be applied to any decision for new applications or variations which include extending hours.
- 7.2 In brief the Policy states at 6.14 that restrictions may be made to the proposed hours of use where, after receiving relevant representations, the council considers it appropriate for the promotion of the licensing objectives to do so. The council will take into account the existing pattern of licensed premises in an area when considering what is appropriate to promote the objectives. Applications which are significantly out of character for a locality will need to demonstrate that granting the hours sought will not impact on the licensing objectives.
- 7.3 A list of premises in the local area and their licensed hours and activities is provided at appendix D.

## **8 Equality and diversity implications**

- 10.1 At the time of writing this report there were no implications for equality and diversity. Any decision taken by the licensing subcommittee will be in accordance with the four licensing objectives as prescribed by the Licensing Act 2003.

## **9 Options available to Members**

9.1 The licensing subcommittee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- Grant the variation as requested.
- Grant the variation whilst imposing additional conditions and/or altering in any way the proposed operating schedule.
- Exclude any licensable activities to which the application relates.
- Reject the whole or part of the application.

9.2 Members of the licensing subcommittee are asked to note that they may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be appropriate in order to promote the licensing objectives.

## **10 Background papers**

- Guidance issued under s182 Licensing Act 2003
- Statement of Licensing Policy