

Report of the Head of Elections, Licensing and Registration

Report to the Licensing Sub Committee

Date: 8th May 2018

Subject: Review of the Premises Licence for 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 & 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:		

Executive Summary

This report informs Members of an application for the review of a Premises Licence under Section 51 of the Licensing Act 2003, sought by in respect of , 48 & 50 Westgate, Otley, LS21 3AS, . The licensing authority is now under a duty to review the premises licence held by these premises.

1.0 Purpose of this Report

1.1 This report provides Members with the background and history to the making of the review application made by Leeds City Council Entertainment Licensing (**Appendix A**). The report sets out the relevant law when reviewing licences under the Licensing Act 2003 ("the Act"), and informs members of the options available to them when reviewing a premises licence.

2.0 Background Information

2.1 On the 1st 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 2 am 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 shop and home address.

On the 5th 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 shop and his home address.

An enforcement officer visited the shop on 9th November 2017 and spoke to the Licence Holder. They discussed the recent incident and asked to view the CCTV system (conditions 1-3) on the premises licence. Mr Khan stated that he had not installed the CCTV system he had agreed to install at the Licensing Committee hearing on 29th March 2016. As a result, no footage was available to Police, to assist in identifying persons involved in the incident.

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

On the 5th December 2017, Mr Khan rang 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 15th November 2017.

On the 12th December 2017, two x TEN (temporary event notice) applications were received from the licence holder. The first application was for the weekend before Christmas, 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 first TEN, it was classed as a Late TEN. A representation was received from West Yorkshire Police, this meant that the TEN had to be rejected and on 14th December 2017, a Counter Notice was issued to the Licence Holder.

The 2nd TEN for the weekend of New Year's Eve was also subject to a representation from West Yorkshire Police due to 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 15th 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 23rd and 24th December 2017.

Entertainment Licensing were advised by West Yorkshire Police that the premises had exceeded their hours up to 1:45 on New Year's Day, the normal hours for hot food being midnight on that day.

On 5th 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 the breaches of his licence. The premises licence holder advised the meeting that he had installed the CCTV system.

On the 16th February 2018, an 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, however 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.

The review application was submitted on the 13th March 2018.

The decision notice is attached at **Appendix B**.

3.0 Premises Licence

3.1 The premises licence holder is Mr Sajid Khan.

3.2 A copy of the premises licence can be found at **Appendix C** of this report. In summary, the premises licence permits the following:

The provision of Late night refreshment

Sunday to Thursday - 23:00 to 00:00

Friday and Saturday - 23:00 to 00:30

There are no non-standard timings

5.0 Location

5.1 A map which identifies the location of the premises are attached at **Appendix D**.

6.0 Main Issues

6.1 The Licensing Authority is applying for the Review under the following Licensing Objectives:

The prevention of crime and disorder

As well as the evidence of persistent breaches of the Licensing Act 2003, the evidence from Police of a large disorder at the premises in November indicates that operating later attracts persons who may be under the influence of alcohol.

Evidence also produced that the premises has refused to provide the CCTV system that the licence holder agreed to install at the committee hearing in March 2016. As a result, this restricted the Police in investigating the disorder in November 2017, if

the CCTV system had been operating as per the conditions 1-3 on the licence, it would have assisted the Police and may have been a deterrent to persons who participate in acts of violence.

The prevention of public nuisance

The Licensing Authority feels that any increase in the permitted hours for Late night refreshment would compromise the above objectives and subject properties in the area to nuisance over an extended period. The premises licence holder's inability to comply with the permitted hours on the existing licence is unlikely to result in them complying with the proposed extended hours.

7.0 Relevant Representations/Letters of Support

7.1 Under the Act representations/support can be received from responsible authorities and or other persons. Representations must be relevant and, in the case of other people, must not be frivolous or vexatious.

7.2 A letter in support of the review application has been received from the Ward Councillor. Member's attention is drawn to the background papers provided.

8.0 Matters Relevant to the Application

8.1 Members of the Licensing Sub Committee must make decisions which are appropriate to the promotion of the licensing objectives which are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

8.2 In making their decision Members are obliged to have regard to guidance issued under Section 182 of the Act. A copy of the relevant section is attached at **Appendix E**. Members must also have regard to the Council's licensing policy, the relevant representations made and evidence they hear.

9.0 Implications for Council Policy and Government

9.1 It is the stated licensing policy of the Council that when considering a review the authority will take into account all relevant circumstances, but will view the matters listed in paragraph 13.15 of the policy with particular seriousness.

10.0 Legal and Resource Implications

10.1 There are no resource implications in determining the review.

10.2 The Act provides the right to appeal on any decision reached on review. The right of appeal is to the Magistrate's Court.

11.0 Recommendations

11.1 Members are requested to determine this review. The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- to modify the conditions of the licence (which includes adding new conditions or any alteration or omission of an existing condition);
- exclude any licensable activities to which the application relates;
- to suspend the licence for a period not exceeding 3 months; and/or
- to revoke the licence.

- 11.2 Members may decide that no action is necessary and that the circumstance of the review does not require the Committee to take any steps to promote the licensing objectives.
- 11.3 Members should note the guidance also suggests it is open to Members to issue an informal warning to the licence holder or to recommend improvement within a particular time. However the Guidance further provides that where responsible authorities have already issued such warnings, the issuing of another warning should not be repeated.
- 11.4 Where the Committee decide that a modification of conditions or exclusion of licensable activities may be imposed, this can either be permanently or for a temporary period of up to three months.
- 11.5 Members are directed to paragraphs 11.25 to 11.31 of the Statutory Guidance which related to reviews arising in connection with crime.
- 11.6 Members of the Licensing Committee are asked to note that they may not take any of the steps outlined above merely because they consider it desirable to do so. It must be appropriate for the promotion of the licensing objectives.

12.0 Background Papers

- 12.1 Guidance issued under s182 Licensing Act 2003
- 12.2 Leeds City Council Statement of Licensing Policy
- 12.3 Background papers – Support of the review from a Ward Councillor

Appendices

- Appendix A Review application
- Appendix B Decision Letter
- Appendix C Premises Licence
- Appendix D Map of premises
- Appendix E Extract from the s182 Guidance