

Licensing Sub-Committee

25 January 2021

Variation to the Premises Licence for Weymouth Kebab House

For Decision

Portfolio Holder: Cllr J Haynes, Customer and Community Services

Local Councillor(s): Cllr J Orrell

Executive Director: J Sellgren, Executive Director of Place

Report Author: Aileen Powell
Title: Licensing Team Leader
Tel: 01258 484022
Email: aileen.powell@dorsetcouncil.gov.uk

Report Status: Public

Recommendation: The Sub-Committee determine the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of;

- a) The prevention of crime and disorder
- b) The prevention of public nuisance
- c) Public safety
- d) The protection of children from harm

Reason for Recommendation: The Sub-Committee must take into account the oral representations and information given at the hearing.

1. Executive Summary

An application has been made to add the sale of alcohol to the premises licence for the Weymouth Kebab House. The application has been out to public consultation and has attracted relevant representations. A Licensing Sub-Committee must consider the application and the representations at a public hearing.

2. Financial Implications

Any decision of the Sub-Committee could lead to an appeal by any of the parties involved that could incur costs.

3. Climate implications

None

4. Other Implications

Public Health and Community Safety

5. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

6. Equalities Impact Assessment

Not Applicable

7. Appendices

Appendix 1 - Current Licence

Appendix 2 - Application

Appendix 3 - Representations

Appendix 4 - Predecessor Council Policy

8. Background Papers

[Licensing Act](#)

[Section 182 Guidance](#)

[LGA Councillors Handbook](#)

[EHRC - Guide to the Human Rights Act for Public Authorities](#)

9. Details

- 9.1. Mr Emrah Tanyel has held the licence for late night refreshment at Weymouth Kebab House, a shop at 1 Westham Road, Weymouth since it was transferred to him in December 2012. On 9th December 2019 the licence was transferred again to include Mr Osman Tanyel on the licence.

9.2. The current licence allows for the sale of Late-Night Refreshment only: -

Sunday to Thursday	23:00 to 05:00
Friday to Saturday	23:00 to 06:00

9.3. The licence was granted subject to the conditions that there is an operational CCTV system and adequate waste disposal around the premises. The current licence is attached at appendix 1.

9.4. The application is to vary the premises licence to allow for the supply of alcohol by delivery;-

Every day	15:00 to 22:00
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The full application is attached at appendix 2.

9.5. The operating schedule at section M of the application form states that the sale of alcohol will be limited to accompany food deliveries only. No alcohol will be displayed or available for purchase in the shop, and that a challenge 25 policy will be applied.

9.6. Mr Emrah Tanyel holds a personal licence issued by The London Borough of Hackney, and he will be the designated premises supervisor.

9.7. The application has been advertised on the premises, in a newspaper and the Councils web site.

9.8. Two representations have been received, one from Weymouth Town Council who refer to the premises being in the Cumulative Impact Area, and one from a member of the public. The representations are attached at appendix 3.

9.9. For a representation to be relevant it must relate to one of the four licensing objectives of:-

- a) the prevention of crime and disorder
- b) the prevention of public nuisance
- c) public safety
- d) the protection of children from harm

10. Cumulative Impact Policy

10.1 The current policy from the predecessor Council is attached in full at appendix 4. Paragraphs 6.6.1 to 6.6.10 set out the principles of a Cumulative Impact Policy.

10.2 Paragraphs 6.12.1 – 6.12.7 set out this special licensing policy which is:

“The Licensing Authority has adopted a special policy relating to cumulative Impact in relation to:

- *Melcombe Regis (Weymouth)*

This special policy will create a rebuttable presumption that applications for new premises licences, club premises certificates, or variation applications that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The effect of adopting a special policy of this kind is to create a rebuttable presumption that where representations are received applications will normally be refused unless the applicant can demonstrate, in their operating schedule, that there will be no adverse cumulative impact on the licensing objectives.

It must be stressed that the presumption created by this special policy does not relieve responsible authorities or other persons of the need to make a representation. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.

This special policy is not absolute. The circumstances of each application will be considered on its merits and the Licensing Authority shall permit licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted.

After receiving representations in relation to a new or variation application the Licensing Authority will consider whether it would be justified in departing from this special policy in the light of the individual circumstances of the case. The impact of an application can be expected to be different for premises with different styles and characteristics. If the Licensing Authority decides that an application should be refused, it will still need to show that the grant of the application would undermine one or more of the licensing objectives and that conditions or restrictions would be an ineffective solution.

Examples of applications that the Licensing Authority may consider as exceptional may include, though are not limited to:

- *Small premises with a capacity of 50 persons or less who only intend to operate during the hours 10:00 and 23:00*
- *Premises which are not alcohol-led and operate only within the hours 08:00 and 22:00*

Examples of factors the Licensing Authority will not consider as exceptional include that the: -

- Premises will be well managed and run*
- Premises will be constructed to a high standard*
- Applicant operates similar premises elsewhere without complaint*
- Similar premises operate in the area.”*

10.3 The supporting evidence for the policy can be found at paragraphs 6.13.1 – 6.14 in the policy attached at appendix 5.

11. Considerations

11.1. Representations relating to matters of public health of people outside of the premises do not relate to one of the licensing objectives as public safety, according to the section 2.7 of the 182 Guidance relates to the following -

“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person’s health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority’s powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.”

11.2. Representations relating to the “need” for such premises do not relate to one of the licensing objectives, this is a matter that is addressed by the planning permission and are therefore to be considered as irrelevant when considering the application.

11.3. Paragraphs 9.42 to 9.44 of the Section 182 Guidance sets how the Authority should decide what actions are appropriate.

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons,

and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

12. Recommendation

12.1. The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of; -

- a) the prevention of crime and disorder
- b) the prevention of public nuisance
- c) public safety
- d) the protection of children from harm.

12.2. The steps that the Sub-Committee may take are: -

- a) To modify the times and/or the conditions of the licence, or
- b) To reject the whole or part of the variation.

11.3. If the Sub-Committee decide to modify the licence they may consider the following conditions as being consistent with the operating schedule.

- a) Alcohol may only be supplied to customers who have ordered a meal for delivery.
- b) All deliveries will be to a bona fide residential or business address.
- c) If the recipient of a delivery containing alcohol appears to be under 25 years of age, recognised photographic identification will be requested before any intoxicating liquor is handed over. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence and passport.
- d) All drivers will be trained in the challenge 25 policy and a written record of such training will be retained and be available for inspection at the request of an authorised officer.
- e) No alcohol will be displayed or available for purchase within the shop,

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.