

**APPLICATION FOR THE GRANT OF A PREMISES LICENCE**

**1. Premises:**

The Hut Central Kebabs  
39 St Mary's Butts  
Reading  
RG1 1LG

**2. Applicant:**

Mr K Saleem  
115 Church Road  
Earley  
Reading  
RG6 1HG

**3. Premises Licence:**

There is currently a premises licence in place for this premises. Issued in 2005

Late Night Refreshment.

Monday 2300hrs until 0300hrs  
Tuesday 2300hrs until 0230hrs  
Wednesday to Friday 2300hrs until 0300hrs  
Saturday from 2300hrs until 0330hrs  
Sunday from 2300hrs to 0200hrs

Opening Hours

Monday from 0900hrs until 0300hrs  
Tuesday 0900hrs until 0230hrs  
Wednesday to Friday 0900hrs until 0300hrs  
Saturday from 0900hrs until 0330hrs  
Sunday from 0900hrs to 0200hrs  
Copy of existing licence Appendix JC1

The existing premises licence holder has refused to transfer the premises licence and has no right to trade from the above address.

**4. Proposed licensable activities and hours:**

The application is for the grant of a premises licence for the following activities:

Late Night Refreshment

Monday 2300hrs until 0300hrs  
Tuesday 2300hrs until 0230hrs  
Wednesday to Friday 2300hrs until 0300hrs  
Saturday 2300hrs until 0330hrs  
Sunday from 2300hrs to 0200hrs  
New Years Eve 0900hrs until 0300hrs the following day

### Opening Hours

Monday from 0900hrs until 0300hrs

Tuesday 0900hrs until 0230hrs

Wednesday to Friday 0900hrs until 0300hrs

Saturday from 0900hrs until 0330hrs

Sunday from 0900hrs to 0200hrs

New Years Eve 0900hrs until 0300hrs the following day

### **5. Temporary Event Notices**

In considering any application the Licensing Authority should be aware of the possible use of Temporary Event Notices to extend entertainment activities or hours of operation. A premises may extend the hours or scope of their operation by the use of Temporary Event Notices. Up to 15 events per year can be held under this provision at a particular premises. These events may last for up to 168 hours provided less than 500 people are accommodated and provided the total number of days used for these events does not exceed 21 per year.

### **6. Date of receipt of application: 9th December 2019**

A copy of the application form is attached at Appendix JC2

### **7. Date of closure of period for representations: 3<sup>rd</sup> January 2020**

### **8. Representations received:**

During the 28 day consultation process for the application, representations were received from:

Thames Valley Police (Attached at appendix JC 3)

Reading Borough Council Licensing (attached at Appendix JC 4)

Mr Emekdar (attached at Appendix JC 5)

### **9. Licensing Objectives and Reading Borough Council's Licensing Policy Statement**

In considering representations received the Licensing Authority has a duty to carry out its functions with a view to promoting the four licensing objectives, which are as follows:

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

Any conditions that are placed on a premises licence should be appropriate and proportionate with a view to promoting the licensing objectives. The Licensing Authority can amend, alter or refuse an application should it be deemed appropriate for the promotion of the licensing objectives.

The Council's licensing policy also places an onus on applicant's who wish to open past 11pm to demonstrate how they will mitigate the issues of crime and disorder and potential public nuisance.

### **The Council's Licensing Policy Statement:**

#### **7.15 Crime & Disorder Act 1998**

7.15.1 In applying this policy, the Authority will have regard to its obligations under Section 17 of the Crime and Disorder Act 1998 and will do all that it reasonably can to prevent crime and disorder in Reading. The Authority will also have regard to the Safer Reading Partnership, which incorporates both local and national strategies and whose mission statement is "We will continue to make Reading a safer place for those who live, work and visit, through a reduction in crime and disorder". In addition the Authority will liaise with the Reading Crime Reduction Partnership in order to reduce crime, misuse of drugs and the fear of crime.

### **8. Cumulative Impact And Need**

#### **8.1 Cumulative Impact Policy (CIP)**

8.1.1 "Cumulative impact" for the purposes of this policy means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, this may include the potential impact on crime and disorder or public nuisance on an area that a large concentration of licensed premises may have.

8.1.2 The cumulative impact of licensed premises is a proper matter for the Authority to take into account in discharging its licensing functions and in developing its licensing policy statement. This should not however be confused with 'need' which relates more to the commercial demand for a particular type of premises e.g. a pub, restaurant or hotel. The issue of 'need' does not form part of this licensing policy statement.

8.1.3 The Authority has considered in formulating this policy, in close consultation with Thames Valley Police, whether there is a particular concentration of licensed premises in a particular part of Reading, which is already causing a cumulative impact on one or more of the licensing objectives.

8.1.4 Concerns do exist about the number of licensed premises in parts of the town centre, particularly in Friar Street, and Gun Street areas, together with the impact that these premises have upon the licensing objectives. The Council recognises the concerns of residents in areas with high proportions

of licensed premises and will use best endeavours and all available legislation so as to ensure these premises and the activities associated with them are properly controlled and do not result in unreasonable disturbance for residents.

8.1.6 It is recognised that pubs, nightclubs, restaurants, hotels, theatres, and other clubs all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard will be had to those differences and the impact they are likely to have on the local community.

8.1.7 The Authority is keen to stress that as well as the licensing function there are a number of other mechanisms for addressing issues of unruly behaviour which occur away from licensed premises. These include:

- (a) planning controls;
- (b) ongoing measures to provide a safer and cleaner environment in partnership with local businesses and others;
- (c) the provision of CCTV surveillance in the town centre, provision of taxi ranks, provision of public toilets, street cleaning and sweeping;
- (d) powers to designate parts of the Borough as places where alcohol may not be consumed publicly;
- (e) confiscation of alcohol from adults and others in designated areas;
- (f) the prosecution of any personal licence holder or member of staff at who is selling alcohol to people who are drunk;
- (g) police enforcement of the law with regard to disorder and anti-social behaviour;
- (h) police powers to close some premises for up to 24 hours in extreme cases of disorder or excessive noise;

8.1.8 The Authority will address a number of these issues through the Reading Community Safety Partnership in line with the strategic objectives for crime and disorder reduction within the Borough.

8.1.9 The effect of keeping the cumulative impact policy, is to create a rebuttable presumption that applications for new premises licences and club premises certificates or material variations, will be refused, if relevant representations are received. A rebuttable presumption is not a presumption that is absolute; it is a presumption that may be overturned if sufficient evidence can be provided against the presumption. Appendix C to this reports list a number of policies and conditions that could be included in an operating schedule and considered by the council.

8.1.10 Applications, which are unlikely to have a negative effect on the licensing objectives, are unlikely to illicit relevant representations. They, therefore, are unlikely to progress to a hearing, with the consequence that they are likely to be granted by officers under delegated powers.

8.1.11 Where during the application for the grant or variation of a premises licence or club premises certificate, responsible authorities or interested parties are concerned that the licensing objectives will be impacted upon, there are likely to be relevant representations, which would lead to the application proceeding to a hearing. If at that hearing, an applicant is able to rebut the presumption of refusal by demonstrating there will be no negative impact on the licensing objectives, a licence can still be granted. However, if the presumption cannot be rebutted, the application is likely to be refused.

## 8.2 Reasons for the CIP approach

8.2.1 The cumulative impact policy is a highly significant measure, because it creates a presumption against a particular form of economic development, and therefore, as a matter of good regulation a policy should not be renewed unless there is a sound reason to do so.

8.2.2 The Council has undertaken research in respect of Reading town centre that has identified high concentrations of licensed premises and high levels of crime for offence types that are associated with the night-time economy, alcohol and licensed premises.

8.2.3 Of the high number of licensed premises in Reading town centre, the majority are well run. However, the sheer volume and concentration of premises is having a negative impact on the licensing objectives.

8.2.4 As a result, the Council, acting as the Licensing Authority for Reading, after considering evidence of crime and looking at concentrations of licensed premises in the borough, is satisfied that it is appropriate to keep a CIP in the town centre in order to promote the licensing objectives.

8.2.5 The Council and partner organisations already employ a range of mechanisms designed to prevent or limit the cumulative impact of any problems arising from premises and their customers behaving inappropriately or unlawfully once away from the premises. The measures currently employed include the provision of night bus services, the use of Taxi Marshals to supervise and control taxi ranks, the presence of Street Pastors in the town centre late at night at weekends to assist people who may be in difficulty, extensive CCTV coverage and monitoring of the town centre, regular joint operations to detect illegal taxis, active use of dispersal orders to improve the town centre environment, and the provision of 'Urilift' toilet facilities in the town centre for people visiting the town centre at night, in an attempt to cut down street urination.

## 8.3 Reading Central CIP Area

8.3 3 The council considers it appropriate to continue with the existing CIP. However, due to the redevelopment of Reading railway station and changes to pedestrian flows, the area north of the railway station which includes Vastern Road and Caversham Road may be considered as a possible extension to the town CIP. Should evidence emerge of a rise in crime and disorder in that area, the council will apply for an extension to the CIP following the Secretary of State's guidance in such matters.

#### 8.4 General Approach to applications within the CIP area

8.4.1 The Secretary of State's Guidance under the Licensing Act 2003 suggests that Local Authorities can, within a cumulative impact area, adopt a policy of refusing all new licences subject to relevant representations and the rebuttable presumption as outlined at paragraph 8.1.9 above being made. It is not the Council's intention to adopt such a broad approach. To do so may operate disproportionately against some types of premises that are unlikely to undermine the licensing objectives and others which can operate without so doing earlier in the evening. The policy therefore takes a more targeted approach by focusing on certain types of operation and those that only operate beyond midnight. For certain types of premises which are not normally associated with undermining to the licensing objectives, the policy is neutral or even positive.

8.4.2 This policy has regard to Secretary of State's Guidance which does not support fixed terminal hours. The policy creates a presumption against some premises operating beyond a certain hour and this is an appropriate and proportionate response to the particular circumstances in the proposed Reading Central CIP area. This is considered preferable than refusing applications outright.

#### 8.5 Application of this policy

8.5.1 This policy will apply to all applications for premises licences and club premises certificates for material variations for premises within the Reading Central CIP Area. Material variations include increases of hours, capacity and all other variations that are likely to add to cumulative impact in the Reading Central CIP Area.

8.5.2 The policy will only be applied where there have been relevant representations. Where there are no relevant representations, it is the duty of the licensing authority to grant the application subject to the conditions in the operating schedule and the mandatory conditions imposed by law.

8.5.3 The policy takes a different approach to different types of premises. In the case of applications for hybrid premises that would fall into more than one type, the predominant use will be taken for the purposes of the policy.

#### 8.6 The Policy

**8.6.6 Late night food outlets:** Applications for the sale of food primarily for takeaway up to midnight will be granted where it is demonstrated that they will not add to cumulative impact and that they will comply with the other provisions of this licensing policy.

Late night food outlets are a major contributor to crime and disorder after midnight. Therefore the policy is to refuse applications involving such sales unless there are exceptional circumstances.

Outlets will need to demonstrate that detailed measures proposed in the operating schedule will result in no increase in crime and disorder, will satisfy the Council granting the application would not contribute to cumulative impact, and there is compliance with the other provisions of this licensing policy.

### **Integration with Planning**

7.1 The Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. However, the Authority will normally expect applicants to demonstrate that, *their proposed use of the premises is lawful in planning terms*, including complying with any conditions that may be imposed upon a planning consent, prior to applications under this Act being submitted.

### **Licensed premises in residential areas**

11.4.1 In general the Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence, stricter conditions are likely to be imposed with regard to noise control in the case of premises that are situated in largely residential areas. In general, public houses located in and catering for residential areas wishing to open beyond 11pm will need to demonstrate clearly that public nuisance will not result from later operation.

## **Amended Guidance issued under section 182 of the Licensing Act 2003 April 2018**

### **Licensing Objectives and Aims:**

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises

### **Steps to promote the licensing objectives:**

8.41 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities; and
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.45 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include:

- the Crime Mapping website;
- Neighbourhood Statistics websites;
- websites or publications by local responsible authorities;
- websites or publications by local voluntary schemes and initiatives; and
- on-line mapping tools.



8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

#### **The role of responsible authorities**

9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area<sup>5</sup>. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in

the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

#### **Licensing authorities acting as responsible authorities**

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

#### **Integrating strategies**

14.63 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

#### **Planning and building control**

14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

#### **Licensing Act 2003**

The Licensing Act 2003 under Section 18 (6) also states that any relevant representation should be considered in the context of:

(a) the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

Therefore in the context of the grant of a licence, it is reasonable for the Licensing Authority to base its decision on an application on what the likely effects of granting a licence would have on the promotion of the licensing objectives.

### Case Law

East Lindsey DC v Abu Hanif (2016) case law underpins the principles widely acknowledged within the Licensing Act 2003 that the licensing objectives are prospective, and that the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

Similarly the case law of British Beer and Pub Association v Canterbury City Council (2005) underpins the value of the Council's licensing policy. Mr Justice Richards stated: "The council is entitled to indicate in the policy its own expectations with regard to the promotion of the licensing objectives; and I do not think that an applicant can legitimately complain if a failure to take account of those expectations gives rise to representations...An applicant who does not tailor his application to the policy therefore faces an uphill struggle."

On Cumulative Impact - the case of Portsmouth City Council v 3D Entertainment Group Ltd (2011) - confirmed that it is entirely down to the applicant to rebut the Cumulative Impact policy. It was not down to the police or the Council to abduce any evidence of negative cumulative impact.

