

APPLICATION FOR NEW PREMISES LICENCE 'BROMYARD KEBAB & BURGER SHOP, CRUXWELL STREET, BROMYARD. HR7 4EB' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Bromyard & Winslow

1. Purpose

To consider an application for a new premises licence in respect of 'Bromyard Kebab & Burger Shop, Cruxwell Street, Bromyard, HR7 4EB

2. Background Information

Applicant	Nihat INCE	
Solicitor	Hallmarks	
Type of application: New	Date received: 21/12/05	28 Days consultation 18/01/06

The advertisement for the premises has not been seen.

3. New Licence Application

The application for a new licence has received representations from the responsible authorities, public and a Local Business. It is therefore now brought before the sub-committee for determination.

4. Summary of Application

The licensable activities applied for are: -
Late Night Refreshment

5. The following hours have been applied for (*Indoors & Outdoors*) in respect of Late Night Refreshment and the hours the premises are to open to public: -
All days of the week 2300 – 0200

6. The premises to be open as follows: -
All days of the week 1000 - 0200

7. Summary of Representations

A copy of the representations can be found within the background papers.

West Mercia Police

Have made no representation in relation to the application.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objective Public Nuisance and Public Safety.

In respect of public nuisance they seek eight conditions relating mainly to noise, litter and smells emanating from the premises

In respect of public safety they seek three conditions in relation to eating utensils, glass containers and the control of number of persons in the premises.

No conditions have been agreed at this time.

Interested Parties

The Local Authority has received 1 letter of representation from 6 local residents and 1 letter of representation from a local business.

The concerns relate to:
Prevention of Public Nuisance

12. Issues for Clarification

This Authority has requested clarification on particular points from the parties shown.

The Applicant – Nihat INCE

Has been requested to provide clarification in respect of matters contained within the application, regarding the following: -

Late Night Refreshment

Explanation has been requested for the reason that late night refreshment is to be supplied both on & off premises.

11. Herefordshire Council Licensing Policy

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and have regard to all documents submitted in respect of the application.

12. Options: -

It is for the committee to take such steps below as it considers necessary for the promotion of the licensing objectives:

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.

- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

13. **Background Papers**

- Public Representations
- Environmental Health & Trading Standards Comments
- Application Form
- Location Plan

Background papers are available for inspection in the Library, Shirehall, Hereford 30 minutes before the start of the hearing.

NOTES

Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)**Relevant, vexatious and frivolous representations**

- 5.73 A representation would only be "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives....
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious....

The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness....

Schedule 2 of the Licensing Act 2003 states: -

The provision of late night refreshment

- 1 (1) For the purposes of this Act, a person "provides late night refreshment" if-
- (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
 - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises

Licensing Authorities power to exercise substantive discretionary powers.**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there

are relevant representations and the decision – making function under section 18 (3) is engaged.

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