

## BABERGH DISTRICT COUNCIL

<b>From: Head of Environment</b>	<b>Report Number: P104</b>
<b>To: Licensing Sub-Committee</b>	<b>Date of meeting: 26 February 2015</b>

### LICENSING ACT 2003 – HEARING TO DETERMINE AN APPLICATION MADE FOR THE GRANT OF A NEW PREMISES LICENCE – CAPPADOCIA (TURKISH RESTAURANT), LONDON ROAD, A12 NORTHBOUND, CAPEL ST.MARY, IPSWICH IP9 2JJ

#### 1. Purpose of Report

- 1.1 To report information to the Licensing Sub-Committee to enable the determination of an application made for the GRANT of a NEW premises licence for the Cappadocia Restaurant situated at London Road, A12 Northbound, Capel St Mary, IPSWICH IP9 2JJ. The premises were previously a Little Chef restaurant (for which a previous premises licence was surrendered on 05 October 2006).

#### 2. Recommendations

- 2.1 The Sub-Committee must, having regard to the representations made, take such of the steps below (if any) as it considers appropriate for the promotion of the licensing objectives:

- to GRANT the licence subject to conditions which are consistent with the operating schedule accompanying the application - modified to such extent as the authority considers appropriate for promotion of the licensing objectives - and subject to any mandatory condition(s) which must be included in the licence;
- 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 premises supervisor; or
- to REJECT the application.

For these purposes conditions of the licence are *modified* if any of them are altered or omitted or any new condition is added.

The Sub-Committee determines this application at the hearing.

#### 3. Financial Implications

- 3.1 There is a statutory right of appeal to the magistrates' court for any party aggrieved by the decision taken by the Licensing Authority.

#### 4. Risk Management

- 4.1 None, other than those that inherently apply to the Licensing Authority when carrying out its licensing functions. The four licensing objectives are prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

## 5. Consultations

- 5.1 The application made has been subject to the statutory consultation period as prescribed by regulation. The requirement for notices advertising the application (press and on-site) have been confirmed to the Applicant.

## 6. Equality Analysis

- 6.1 There are no equality impacts arising directly from the matters contained within this report.

## 7. Key Information

- 7.1 The hearing is to determine an application for the GRANT of a NEW premises licence made under section 17 of the Licensing Act 2003. This application was originally received on 11 December 2014 but was re-started on 13 January 2015 due to an advertising non-compliance on the part of the Applicant. A copy of the application including plans of the premises are attached as Appendix A.

- 7.2 The application was only submitted following a visit from the Council's enforcement team, on 10 December 2014, in response to alleged carrying on of unlicensed activities (including sale/supply of alcohol). The applicant Mr Alperen Koksai had been given clear advice by the Licensing Team on 17 November 2014 that the premises were not licensed (since 2006) and an application pack was sent to Mr Koksai on the same date. A complaint was made to the Licensing Team that the premises were, after this date, selling/supplying alcohol without a licence. This necessitated the intervention of the Council's Enforcement Team. Mr Koksai admitted, under caution, the sale and supply of alcohol without an authorisation to do so and this matter is an ongoing investigation and may potentially lead to enforcement action/prosecution in accordance with the Council's Joint Enforcement Policy. There were indications that the premises operators were selling/supplying alcohol again, unauthorised, over the Christmas period. A further unauthorised sale of alcohol was made to a Council enforcement officer on 10 January 2015.

- 7.3 The application has been submitted by:

### **Mr Alperen Koksai**

For the proposed licensed premises:

**Cappadocia Restaurant** situated at London Road, A12 Northbound, Capel St.Mary, IPSWICH IP9 2RR

The designated premises supervisor DPS is:

**Mr Alperen Koksai** (a personal licence holder with Babergh District Council number BPA0874 which was issued 08 October 2013)

- 7.4 The information provided with the application outlines that the restaurant has seating for 70 persons and serving bar, with both closed and open kitchens. It should be noted for information that the current planning consent restricts opening hours to 10am to 10pm so the hours proposed by the licence application, which are 12 noon until 10pm (with alcohol sales ceasing at 9pm), would represent no conflict. Members of the Sub-Committee will be aware of Statutory the Secretary of State's guidance at paragraph's 13.56 and 13.57, which states that planning and licensing are different regimes and neither is bound by the others decisions.

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.

- 7.5 A hearing is necessary to determine the application following receipt of representations which have not been withdrawn. The Sub-Committee will be aware that its consideration is confined to promotion of the four licensing objectives and the 'need', or commercial demand, for licensed premises are not considerations for the Licensing Authority when discharging its licensing functions (as outlined by the Secretary of State at paragraph 13.18 of the Guidance issued under section 182 of the Licensing Act 2003).
- 7.6 Members of the Sub-Committee will be aware that the Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore beyond the direct control of the individual, club or business holding the licence, certification or authorisation concerned. Nonetheless, the Licensing Act 2003 contributes towards a holistic approach to management of the evening and night-time economy in town and city centres (as outlined by the Secretary of State at paragraph 13.13 of the Guidance issued under section 182 of the Licensing Act 2003).
- 7.7 The statutory guidance issued in October 2014 at paragraph 2.6 advises that "Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety".
- 7.8 Further paragraph 11.21 of the guidance advises that "licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual". The subsequent paragraph (11.22) advises that "equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."
- 7.9 The Licensing Authority must carry out its functions under the Act with a view to promoting the licensing objectives, which are:
- (a) the prevention of crime and disorder;
  - (b) public safety;
  - (c) the prevention of public nuisance; and
  - (d) the protection of children from harm
- 7.10 In carrying out its licensing functions, the Licensing Authority must have regard to its 'Statement of Licensing Policy' published under section 5 of the Act, and any guidance issued by the Secretary of State under section 182.

- 7.11 Where revisions are made to the legislation or guidance issued by the Secretary of State, there may be a period of time when the local Statement of Licensing Policy is inconsistent with these revisions. In these circumstances, the Licensing Authority will have regard, and give appropriate weight, to the relevant changes, guidance and its own Statement of Licensing Policy.
- 7.12 The Sub-Committee will also be aware of Human Rights Act 1998 considerations - specifically Article 6 for the applicant and Articles 8 and 1 of Protocol 1 for those raising representations - when determining applications for the grant of a new licence.

## 8. Representations

- 8.1 The Licensing Authority has received representations from Responsible Authorities (the Licensing Authority delegated officer performing this role and also the Chief Officer of Police). Whilst the Applicant has confirmed with the re-submitted application that he proposes further conditions from the original submission, the representations made have not been withdrawn due to the alleged compliance and management issues, and further indications of unauthorised licensed activity.
- 8.2 There has also been a supportive representation made by Capel St Mary Parish Council, defined as 'other persons' under the Act (which includes local residents and businesses). These representations and relevant information are attached as Appendix B to this report.

## 9. Appendices

Title	Location
A. Application for GRANT of NEW premises licence and accompanying documents/premises plans	Attached
B. Representations received from 'Responsible Authorities'	Attached

## 10. Background Documents

- 10.1 The Licensing Act 2003
- 10.2 Guidance issued under Section 182 of the Licensing Act 2003 (October 2014)
- 10.3 Babergh District Council's Statement of Licensing Policy

### Authorship:

Claire Airlie  
Licensing Officer

01473 826664  
[licensing@babergh.gov.uk](mailto:licensing@babergh.gov.uk)