



# Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>FRIDAY 27 SEPTEMBER 2019</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A REVIEW OF THE PREMISES LICENCE UNDER SECTION 51 OF THE LICENSING ACT 2003 FOR RYDE KEBAB HOUSE, 5 HIGH STREET, RYDE, ISLE OF WIGHT, PO33 2PN</b>
Report of	<b>COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS</b>

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## CONFIDENTIAL / EXEMPT ITEMS

1. A portion of information that will be presented at the hearing must remain confidential as it relates to a current Police investigation. Appendix F of this report along with the CCTV footage must remain confidential.

## BACKGROUND

2. At any stage following the grant of a premises licence under the Licensing Act 2003 (the Act), a responsible authority or other person may apply to the licensing authority for a review of the licence on the grounds that one or more of the four licensing objectives is not being upheld.
3. A premises licence for Ryde Kebab House was originally granted in 2005 when the Licensing Act came into force; the current licence can be found at Appendix A. The current holder of the premises licence is Mr Seyit Cal.
4. Hampshire Constabulary (as a responsible authority under the Licensing Act 2003) have applied for a review of the premises licence under Section 51 of the Act.
5. Police have provided details of several violent incidents regarding these premises that have occurred since late 2016; these have included staff being violent towards customers, which is shown on CCTV footage taken from within the premises as well as outside in the High Street.
6. It also appears there have been breaches of the hours permitted by the licence as well as its conditions; advice from Police regarding complying with the licence and managing the premises seem to have been ignored by the Licence Holder.

7. The Police believe the following objectives are therefore not being upheld in relation to these premises:
  - The Prevention of Crime and Disorder
  - Public Safety
8. The full application can be found at Appendix B.

### CONSULTATION

9. The Licensing Act 2003 prescribes a consultation period of twenty-eight days, commencing the day after the review application has been correctly served. The licensing authority is required to advertise the application at or on the premises and at the Council offices.
10. This review application was received on 5 August 2019. The application was advertised at the premises, at the Council offices at Jubilee Stores and County Hall and on the Council's website. The consultation period ended on the 2 September 2019.
11. The outcome of the consultation in respect of this review application is summarised below; all representations can be found at Appendix D.

#### Responsible Authorities

Children's Services	Representation made
Environmental Health	Representation made
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made

12. Children's Services support an application for review and revocation of the licence if this is deemed necessary to ensure the safety of children who may have access to the premises.
13. Environmental Health confirm that they have no concerns to raise but would recommend Mr Cal follow the guidance from the Health and Safety Executive regarding 'Managing Violence in Licensed and Retail Premises'.

#### Other Persons

14. Representations from Ryde Town Council were received confirming their support for a review of the licence based on the information included in the application.

## FINANCIAL/BUDGET IMPLICATIONS

15. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

## LEGAL IMPLICATIONS

16. The consultation period ended on 2 September 2019. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

### National Guidance

17. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:

#### Public Nuisance

- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

#### Determining actions that are appropriate for the promotion of the licensing objectives

- 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.

### Proportionality

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

### Reviews

- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend

improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

#### Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal

courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

#### Implications under the Crime and Disorder Act 1998

18. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### Human Rights

19. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
20. There are three convention rights, which need to be considered in this context:

##### Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

##### Article 8 - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

##### Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it

deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

21. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents and communities not to be disturbed by problems caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council’s legitimate aim.
22. It is considered that the following paragraphs from the Licensing Authority’s Statement of Licensing Policy 2019 – 2024 have a bearing upon the application. Members’ attention in respect of this application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	3.1, 3.3
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Major Events and the Isle of Wight County Council Act	N/A
Paragraph 7	Cumulative Effect	N/A
Paragraph 8	Representations, Reviews, and Appeals	All
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.3, 10.4, 10.12, 10.19

### EQUALITY AND DIVERSITY

23. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation, all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
24. There is no requirement for an equality impact assessment to be carried out regarding this decision.

## OPTIONS

- Option 1: To take no action and retain the licence in its current form.
- Option 2: To modify the hours of activities or the conditions of the licence
- Option 3: To suspend the licence for a period not exceeding three months
- Option 4: To revoke the licence

## RISK MANAGEMENT

- 25. With regard to Option 1: To retain the existing permitted hours and licence conditions would allow licensable activities to continue as they do currently. Given the violent nature of the incidents that have occurred relating to these premises, there is a risk that taking no action will not uphold the licensing objectives *Prevention of Crime and Disorder* and/or *Public Safety*. This decision could also be appealed by Police to the Magistrates' Court.
- 26. With regard to Option 2: Modifying the hours of activities and/or the conditions of the licence could appropriately control the licensable activities and ensure the licensing objectives are promoted. Any changes to the licence may impact on the way the licence holder conducts his business and may have financial implications for the licence holder. This decision could be appealed by any party if the modifications are not proportionate to the concerns raised and/or if they do not assist in upholding the licensing objectives.
- 27. With regard to Options 3 and 4: The suspension or revocation of the licence would have an obvious impact on the livelihood of the licence holder; they may therefore be more likely to appeal this decision if it is not proportionate or appropriate for the promotion of the licensing objectives.

## EVALUATION

- 28. In determining a review of a premises licence, the national guidance suggests that authorities seek to establish the causes of concern, in order to identify the most appropriate course of action of the options available. The guidance also states that 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.
- 29. Police believe that the *Prevention of Crime and Disorder* and the *Public Safety* objectives are being compromised by the way Ryde Kebab House is managed; their application for review of the premises licence details several incidents which have involved the licence holder and members of staff being violent towards customers, non-compliance with the licence hours and conditions as well as ignoring the advice of responsible authorities.
- 30. Licence Holders are responsible for ensuring that their licence is complied with and that the activities permitted are conducted in a way that promotes the licensing objectives. The actions of the licence holder and staff is in direct opposition of the objectives as they have not sought to resolve disorder in a



safe way but have exacerbated such problems and put other members of the public at risk.

31. It would therefore appear to be disproportionate for the sub-committee to take no action.
32. The sub-committee have the option of modifying the hours for activities and/or the conditions on the licence (the licence can be found at Appendix A). They could consider reducing the hours Late Night Refreshment can be provided or attach conditions to the licence that would ensure the licensing objectives are upheld. For example, the sub-committee may believe that a condition requiring door supervisors be in place at the premises whilst activities are taking place or for a specific time may be appropriate.
33. The sub-committee must be satisfied that any modifications to the licence will address the cause of the problems identified and that the cost implications of such action for the licence holder is proportionate to these problems.
34. There has been no proposal by Police that modifying the licence would address their concerns and at the time of writing the report, no information has been received from the holder of the licence regarding additional steps they wish to propose to prevent any further incidents occurring.
35. There has been concern that activities have taken place later than permitted by the licence and that conditions have been breached (for example, CCTV images displaying the incorrect time, the incident book was not kept on the premises available for inspection). Considering such non-compliance with the licence and the hours that the incidents have occurred, the sub-committee may not be satisfied that modifying the licence would be an adequate approach to promote the licensing objectives.
36. If considering the option of suspending the licence for a period of up to three months, the sub-committee must take paragraph 11.23 of the national guidance into account (see above), which states that such action can be a deterrent for the licence holder and must be proportionate action given the detrimental financial impact. This section of the guidance also states, *“But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.”*
37. To revoke the licence, the sub-committee must be satisfied that the other options available to them would not adequately promote the licensing objectives and this action is proportionate to the issues raised.
38. The sub-committee must have regard to all of the representations made and the evidence it hears as well as the national guidance issued under Section 182 of the Licensing Act 2003 and the Council’s own Statement of Licensing Policy.

39. Their 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.
40. The Committee should determine the application in accordance with section 52 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
  - The Prevention of Crime and Disorder
  - The Prevention of Public Nuisance
  - Public Safety
  - The Protection of Children from Harm

#### RECOMMENDATION

41. Members should determine the application in accordance with section 52 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

#### APPENDICES ATTACHED

[Appendix A](#) Current Premises Licence granted in respect of Ryde Kebab house under the Licensing Act 2003

[Appendix B](#) Application for a review of the premises licence under section 51 of the Licensing Act 2003

[Appendix C](#) Summary of incidents and reports

[Appendix D](#) Supporting Information from Police

[Appendix E](#) Representations received during the consultation period

Appendix F CONFIDENTIAL CCTV footage to be made available at the meeting

#### BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024.  
<https://www.iow.gov.uk/azservices/documents/1226-Approved-Licensing-policy-2019-24.pdf>

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