

SUBJECT:	APPLICATION FOR REVIEW OF PREMISES LICENCE TOPKAPI, 131 HIGH STREET, LINCOLN, LN5 7PJ
DIRECTORATE:	COMMUNITIES & ENVIRONMENT
REPORT BY:	IAN CULLEN, LICENSING OFFICER

1. Purpose of Report

- 1.1 To determine an application for review of a premises licence made by Lincolnshire Police in respect of premises known as Topkapi, 131 High Street, Lincoln, LN5 7PJ.

2. The Application

- 2.1 On the 3rd April 2017, the Chief Officer of Lincolnshire Police made an application under Section 51 Licensing Act 2003 (“the Act”) for a review of the premises licence held by Yusuf Yilmaz in respect of the above premises. A copy of the application form can be found at Appendix A.
- 2.2 Section 51 makes provision for a responsible authority or any other person to apply to the Licensing Authority for a review of the premises licence. In this case Lincolnshire Police, being a responsible authority, believe that, due to offences of assault using weapons leading to injuries, the licensing objectives of preventing crime and disorder and promoting public safety have been undermined.
- 2.3 The Police’s review application is supported by a statement and photographs within annexes to Appendix A.
- 2.4 The review application also refers to further appendices which the Police will be presenting, however at the time of writing this report this material has not been submitted. It is stated within the application that these may be subject to Regulation 14 of The Licensing Act 2003 (Hearings) Regulations 2005. (For further information see paragraphs 9.9 to 9.12).

3. Relevant Representations – Responsible Authorities

- 3.1 There have been no representations from any other responsible authorities.

4. Relevant Representations – Licence Holder / Other Persons

- 4.1 There have been no representations from any other person.

5. Background

- 5.1 Yusuf Yilmaz has held the premises licence since the licence was transferred to him in January 2017. Prior to this it was held by his brother Kubilay Yilmaz who had had the licence since April 2011.
- 5.2 A copy of the premises licence can be seen at Appendix B. This licence authorises the provision of late night refreshment indoors only.
- 5.3 The Notice advertising the application for the review was placed on the premises, on the Council's notice board and website on the 3rd April 2017. As far as is known the notices were in place for the full 28 day period.
- 5.4 Notices of this hearing, together with relevant documentation, were forwarded to all parties on the 3rd May 2017.

6. Promotion of Licensing Objectives

- 6.1 The duty of the Licensing Authority is to promote the licensing objectives having regard to the Act and Regulations made there under, Guidance issued under S182 of the Act by the Home Office and the Council's own Licensing Policy.

7. Considerations

7.1 Section 182 Guidance and Licensing Authority Policy

- 7.2 Chapter 11 of the S182 Guidance describes the Review process and paragraphs 11.16 to 11.23 gives guidance on the powers of a licensing authority on the determination of a review (See Appendix C).
- 7.3 Paragraph 11.23 gives advice on the decision making of the sub-committee.
- 7.4 Chapter 9 of the Council's Statement of Licensing Policy refers to Reviews (See Appendix D).
- 7.5 Chapter 5 of the Council's Statement of Licensing Policy refers to the Licensing Objectives and paragraphs 5.2 and 5.3 refer to crime and disorder and public safety. (See Appendix E)
- 7.6 If the Licensing Authority is minded to place further conditions or modify existing conditions on the premises licence, then they may only be imposed where they are appropriate and proportionate for the promotion of one or more of the four licensing objectives (in this case crime and disorder and public safety). Conditions may not be imposed for other purposes.
- 7.7 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.

7.8 Lord Justice Scott Baker in the case of *Crawley Borough Council v Stuart Attenborough and Angela Attenborough* said “*Let me say a brief word in general terms. It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialised knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.*”

7.9 Paragraphs 1.7 of the Council’s Licensing Policy states:

The purpose of licensing is to control licensable activities and authorisations within the terms of the Act. Each licence application or authorisation will be considered on its own merits in the context of the four licensing objectives...

8. Human Rights Act

8.1 Article 6 – right to a fair hearing

“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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The right to engage in commercial activities is a civil right –
Kaplan v United Kingdom 1980
Pudas v Sweden 1987

8.2 Article 8 – right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Removal or restriction of a licence may affect a person’s private life.

8.3 Article 1, Protocol 1 – peaceful enjoyment of possessions

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession.

Tre Traktorer Aktiebolag v Sweden 1989

- 8.4 The holding of this hearing where the premises licence holder and the applicant for the review can give written or oral evidence either personally or through a representative ensures that the requirements of the Human Rights Act has been complied with.

9. Other Considerations

- 9.1 The Sub-committee must determine this application and take what actions, if any, are appropriate and proportionate for the promotion of the licensing objectives identified.

- 9.2 The Sub-Committee’s determination should be made on this case’s individual merits by;

- considering the points raised in the review application concerning the incidents and the operation and management of the licensable activities;
- should be evidence-based.

- 9.3 The onus falls upon those making the application to show that the promotion of the licensing objectives is at risk.

- 9.4 The Sub-Committee should expect original evidence to be put before it by any party. It is not enough for the Sub-Committee simply to rely upon material submitted; it must apply a critical mind to the quality and reliability of that material for itself.

- 9.5 Determination of whether an action or step is appropriate and for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end.

- 9.6 If the Sub-Committee is minded to impose further conditions on the licence then any such conditions should be achievable, realistic, necessary, appropriate, proportionate and within the control of the licence holder. They should be based on a proper, common sense consideration of the risks to the licensing objectives identified in the application and what can realistically be done to mitigate them.

- 9.7 This hearing is subject to Regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005 and the Sub-Committee must make its determination within a period of five working days beginning the day or the last day on which the hearing was held.

9.8 Therefore, the Sub-Committee does not have to make its determination at the conclusion of the day or last day of the hearing as the case may be.

9.9 As previously mentioned some material presented by the Police may be subject to Regulation 14.

9.10 Regulation 14 states:

- (1) *Subject to paragraph (2), the hearing shall take place in public.*
- (2) *The licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.*
- (3) *For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public.*

9.11 The following options are available to the Sub-Committee with regard to this material:

- Under Regulation 19, the Sub-Committee can disregard any information given by a party;
- Have regard to the information and not use its powers under Regulation 14; or
- Have regard to the information and use its powers under Regulation 14 to exclude the public (as defined in paragraph 9.10 above) for the whole or part of the hearing.

9.12 The Sub-Committee should take care not to mention the nature or contents of confidential material in any documents which may come into the public domain.

10. Options

10.1 The authority must, having regard to the application and representations made, take such of the steps mentioned below as it considers appropriate, for the promotion of the licensing objectives.

10.2 Section 52(4) Licensing Act 2003, the following options are available to the Sub-Committee:

- a) to modify the conditions of the licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to suspend the licence for a period not exceeding three months;
- d) to revoke the licence; or
- e) take no action.

10.3 The Sub-Committee should note:

Conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

This could include modification of the licensing hours.

- 10.4 Should the Sub-Committee consider taking a step mentioned in either a) or b) in paragraph 10.2 above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
- 10.5 A determination of a review does not have effect until the end of the period for appeal against the decision (within 21 days from the date of receipt of the notification of the decision).
- 10.6 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).

11. List of Associated Papers

- 11.1 Appendix A Review application (Lincolnshire Police)
- Appendix A(i) Statement PC Gemma Birch (restricted document)
- Appendix A(ii) CCTV images (restricted document)
- Appendix B Copy premises Licence
- Appendix C: Chapter 11 S182 Guidance
- Appendix D: Paragraph 9 Statement of Licensing Policy
- Appendix E: Paragraph 5 Statement of Licensing Policy

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