

Item No. 29	Classification: Open	Date: 03/03/03	MEETING NAME Licensing Committee
Report title:		Entertainment Licensing – Yilmaz Kebab House, 49/51 Lordship Lane, London SE22	
Ward(s) or groups affected:		East Dulwich Ward	
From:		Director of Environment & Leisure	

RECOMMENDATIONS

1. That the Committee considers an application made by Mr Ahmed Yilmaz for the renewal, for the period 1 October 2002 to 30 September 2003, of the Weekday and Sunday public music and dancing licence in respect of the ground floor restaurant of the premises known as Yilmaz Kebab House, 49/51 Lordship Lane, London SE22.
2. **The application is opposed by the Metropolitan Police Service.**
3. In considering any application for a public entertainments licence the Committee must consider each case on its merits. In doing so, the Committee will take into account all relevant considerations including: -
 - i) noise emissions from the premises in the event that a licence is granted;
 - ii) likely disturbance of residents caused by patrons leaving the premises;
 - iii) fitness of the applicant to hold a licence;
 - iv) suitability of the premises and its location; and
 - v) any other relevant matters, as appropriate.

BACKGROUND INFORMATION

4. The applicant, Mr Ahmed Yilmaz, currently holds both night café and public music and dancing licences in respect of the premises. Number 49 Lordship Lane operates as a takeaway hot food shop, with the restaurant and entertainment being provided at 51 Lordship Lane.
5. The night café licence, which was first issued to Mr Yilmaz in 1987, allows food to be both consumed on the premises and taken away each day of the week between the hours of 11pm and 5am. This effectively means that the premises can trade as a café/takeaway twenty-four hours seven days a week. This licence is due for renewal on 31 March 2003.
6. When the night café licence was first granted it was constrained by a condition that prohibited its use until specified public safety works had been satisfactorily completed. In February 1997 Mr Yilmaz pleaded guilty at Camberwell Green Magistrates Court to a breach of the night café licence "works condition" and was fined £300 and ordered to pay a contribution of £200 towards the Council's costs. As a result of this conviction the Licensing Sub

Committee met in September 1997 to consider whether or not to revoke the night café licence. The Sub Committee decided not to revoke the licence.

7. The public music and dancing licence, the renewal of which is the subject of this application, was first issued in September 1999, and allows public entertainment to be provided in the restaurant area (which is located at 51 Lordship Lane) on Monday, Tuesday & Wednesday to 11pm, Thursday, Friday & Saturday to 1am on the day following and on Sunday to 10.30pm.
8. Prior to the grant of a public music and dancing licence Mr Yilmaz had, in April 1998, been found guilty by Tower Bridge Magistrates Court of providing unlicensed public music and dancing at the premise. Mr Yilmaz was fined £500 and ordered to pay the Council's costs in the sum of £600.
9. The initial application for a public music and dancing licence was referred to the Licensing Sub Committee for consideration on two counts, the applicant's previous conviction and opposition from local residents and a ward councillor. The Sub Committee decided to grant the application for a six-month period, however in the first instance the licence was constrained by a condition that prevented its use until specified sound containment and public safety works had been satisfactorily completed. All specified works were completed just over a year from the date that the Sub Committee granted the licence, and in October 2000 a full an operational licence valid until the end of March 2001 was issued.
10. The public music and dancing licence was renewed with out opposition for a further six months in April 2001 and for again for a further year in October 2001.
11. In August 2002 Mr Yilmaz was invited to renew the public music and dancing licence for the period 1 October 2002 to 30 September 2003, and on 30 September 2002 an application to renew the licence along with a cheque for the requisite fee was received by the Licensing Unit. However, as the cheque bounced and Mr Yilmaz had not signed the application form, it was not until 7 November 2002 that the application was accepted as full and proper.
12. Consultation on the application has been carried out in accordance with the Council's normal procedure and the Police have lodged objections.
13. On 14 January 2003 the application was referred to the Licensing Committee for determination. However a constitutional matter led to the Committee not being in quorum. The application to renew the premises public music and dancing licence for the period 1 October 2002 to 30 September 2003 is therefore referred to the Committee for determination.

KEY ISSUES FOR CONSIDERATION

The Operation of the Premises

14. As previously mentioned the premises hold both night café and public music and dancing licences, with number 49 Lordship Lane operating as a takeaway food shop and number 51 providing an eat in facility. The public entertainment is provided at number 51, and food cooked at number 49, is provided via a serving hatch.
15. The takeaway and restaurant have separate entrance doors, both of which are located on Lordship Lane. The entrance to number 51, which can safely accommodate one hundred (100) persons, is lobbied and the emergency escape exit is at the rear. Tables and chairs are located at the front of the premises, which has a designated dance floor, and the bar is

sited at the rear. A plan showing the layout of the premises is attached as Appendix A to the report.

16. The most recent inspection of the premises under its public entertainments licence was conducted on 30 August 2002. During the course of the inspection the following matters were noted: -
- i) The light to the rear emergency exit was in need of repair;
 - ii) A hot water tap in the ladies toilet was required; and
 - iii) Evidence that the decorative netting was fire retardant required.

At the time of the inspection Ms Emma Jarvis identified herself as being in charge of the premises. She informed the inspecting Officers that Mr Yilmaz was out of the country and that she had taken over the management of the premises. At the time of the inspection Officers provided Ms Jarvis with a copy of the inspection sheet, which identified those matters noted as in need of urgent attention, and a copy of the premises entertainments licence. Furthermore on 2 September 2002 a copy of the Council's Rules that govern premises licensed for the provision of public entertainment was dispatched to Ms Jarvis.

17. On 3 September 2002 an Officer of the Licensing Unit tried to contact Ms Jarvis, on the telephone number she had provided. There was no reply, but the Officer left a message on the answer phone asking that Ms Jarvis contact them.
18. On 13 September 2002, having not heard from Ms Jarvis, Officers made a follow up visit to the premises. Officers visited at 3am, when the premises should have been operating solely as a night café. However, prior to entering the premises it became apparent that entertainment was being provided, as music could be heard and Officers noted people dancing. A doors supervisor was on duty and after identifying themselves Officers asked to speak with the manager. A second man, who was stood near the door, went inside to get the manager and whilst waiting for the arrival of the manager Officers asked the door supervisor for his badge. The door supervisor was unable to show Officers a Southwark badge, but he did show a badge issued by Westminster Council. Officers explained to the door supervisor that if he was not registered with Southwark Council he should not be working at the door, at which point he claimed not to be working and told them that a private party was being held.

A man then came to the door and identified himself to Officers as Mr Liziya Sacmacioyiu, and confirmed that he was in charge. Officers informed him that music and dancing was not permitted at the premises beyond the hour of the licence, which on this occasion was 1am. The Police, who were with the Officers at the time of the visit, also told Mr Sacmacioyiu that he was breaching the hours of the premises liquor licence. Mr Sacmacioyiu told Officers that it was a private family party, however during the time that the Officers had been stood at the door customers were continually arriving and being admitted to the premises. Officers pointed this out to Mr Sacmacioyiu, who then started to refuse admission. This created a hostile environment with people claiming that they regularly arrived at this time and were always admitted.

19. Concerns over the operation of the premises and their lack of proper management led Officers to visit again on 12 October 2002. On this occasion Officers, who were accompanied by the police, entered the premises as if a member of the general public at 2am. Two men were working the door, but merely opened it to allow the Officers to enter. Music and dancing was being provided, the bar was open, alcohol was being served and well over one hundred (100) people were on the premises. Officers approached the bar and were asked what they would like to drink; the Officers then identified themselves and asked to speak to the manager.

On this occasion a Mr Ziaiha came to speak with Officers, but when asked if he was in charge only shrugged. After being pushed to confirm who was responsible for the management of the premises he stated "family", but would not give a name. Officers explained that he should not be providing public entertainment and the police told him that alcohol should not still be being served. Officers said that they would leave the premises, but return in 30 minutes when they would expect them to either be closed or operating solely as a night café.

At approximately 2.40am Officers observed the premises from their car, which was parked directly opposite. The premises were still open and operating. After a few minutes Mr Ziaiha noticed the car and the premises door was closed, the neon entrance sign along with the front lights were switched off and the front window blinds were shut. Officers continued to observe the premises for a further 50minutes during which time approximately 50 customers arrived, all of whom were refused admission.

20. A further visit to the premises was conducted at 12 midnight on Sunday 20 October 2002. On this occasion there was no door supervisor on duty and officers entered the premises unchallenged. Approximately thirty (30) people were on the premises and music was being provided and alcohol was being served, although nobody was dancing. On this occasion Mr Ziaiha and Mr Sahin spoke to the Officers. Once again neither admitted to being in charge. Officers asked as to the whereabouts of Ms Jarvis and were informed that she was upstairs but was too ill to come to speak to them. After being pushed Mr Ziaiha told Officers that Mr Yilmaz's daughter was in charge in his absence. She was not on the premises but Officers did speak to her on the telephone and she did own that in the absence of her father she was responsible. Officers told her of the other visits and the breaches of the licence, they also explained that music and alcohol were being provided on this occasion and that she should instruct the staff to turn the music off and stop serving alcohol. Whilst Officers were on the premises the music was turned down but not off.
21. On 23 October 2002 a letter was sent to Ms Fatima Yilmaz fully informing her of the current situation. A copy of this letter is attached as Appendix B to the report.
22. At 2.50am on 16 November 2002 Officers visited the premises, accompanied by the police and a local councillor. The door to the restaurant was shut but when a customer knocked the door was opened and officers followed him in. On this occasion approximately one hundred (100) people were on the premises, music was being provided and alcohol was being served. Officers approached the bar and asked to speak to the person in charge, however nobody accepted responsibility. Officers were then ushered into the takeaway area where staff contacted Ms Fatima Yilmaz and Officers spoke to her on the telephone. Once again Officers explained to Ms Yilmaz that the premises were operating in breach of the licence conditions. Officers left at 3.05 with the premises continuing to operate in breach of the licence conditions.
23. On 21 November 2002 Mr Ahmed Yilmaz and Ms Fatima Yilmaz attended the Chaplin Centre and met with Officers of the Licensing Unit and PC McNally of Peckham Police Station. During the course of this meeting Mr Yilmaz explained that he had been absent from the premises due to the ill health of a family member in Turkey. Officers advised him of the occasions they had visited and the breaches witnessed and that his application to renew the public music and dancing licence would be reported to the Committee, along with the detail of all recent visits. Furthermore Officer informed Mr Yilmaz that consideration was being given to the institution of legal with regard to the breaches witnessed and advised him to contact his solicitor.
24. A letter alleging that offences had been committed under both night café and entertainment licensing legislation, and inviting Mr Yilmaz to attend a formal interview, under caution and in

accordance with the procedure laid down in the Code of Practice made under the Police and Criminal Evidence Act 1984 was sent on 21 November 2002.

The Opposition

25. Objections to the application to renew the licence have been lodged by the Metropolitan Police Service, and a copy of their letter of opposition is attached as Appendix C to the report.
26. Subsequent to submitting their letter of objection the Metropolitan Police Service have notified the Licensing Unit that the alcohol licence at the premises has been revoked.

Noise Team Comments

27. The Noise Team has no objection to the renewal and does not seek to impose any additional conditions on the licence. Since the entertainment licence came into force the Noise Team has received two complaints. Both of these were in September 2002 and neither was substantiated by the Noise Team Officers. The client cancelled one before the Team visited and the noise heard on the other occasion the sound heard was not considered to be a nuisance.

Technical Regulations

28. The premises meets with the standard required under the Council's Technical Regulations for venues licensed for the provision of public entertainment and for those operating as a night café.

Licence Conditions

29. The application seeks to renew, for the period 1 October 2002 to 30 September 2003, the weekday and Sunday public music and dancing with an extension beyond the permitted hours on Friday and Saturday to 1am on the day following. This licence is subject to compliance with the Council's Rules of Management for Places Licensed for the Provision of Public Entertainment and to the following special licence conditions: -
 - i) That all audio and musical equipment used in the premises shall be played through the sound limiting/cut-out device and the sound limiting/cut-out device is to be maintained so that the music played in the premises is inaudible in adjacent and nearby residential premises to the satisfaction of the Noise Team;
 - ii) That all external fire doors shall be kept closed, allowing for emergency egress and the external entrance doors shall be kept closed, allowing access and egress, whilst entertainment is being provided;
 - iii) That there shall be no movement of musical or amplification equipment from the premises between the hours of 12 midnight and 8am;
 - iv) That musical entertainment shall not be provided in the take-away and kitchen areas;
 - v) That suitable notices shall be displayed, and announcements shall be made, requesting people to leave the premises in a quiet and orderly manner with due regard to local residents; and
 - vi) That the maximum number of persons that may be accommodated at any one time in the premises shall not exceed one hundred (100).

The Local Vicinity

30. A map of the local vicinity is attached as Appendix D to the report.

Just of the map and licensed for the provision of public music and dancing is:-

- East Dulwich Tavern, 1 Lordship Lane, SE22 (Mon - Wed to 11pm, Thur – Sat to 12 midnight and Sun to 10.30pm).

Shown on the map and licensed to operate as a night café and takeaway is: -

- Favorite Chicken & Ribs, 39 Lordship Lane, SE22 (Sun - Thur to 2am and Fri & Sat to 3am).

Just of the map and licensed to operate as a night café and takeaway is: -

- Kebab & Wine, 19 Lordship Lane, SE22 (Sun - Thur to 2am and Fri & Sat to 4am);
and
- B2, 93/95 Lordship Lane, SE22 (Sun - Sat to 5am).

RESOURCE IMPLICATIONS

31. Upon application for renewal of the public music and dancing licence a fee of £805.60 was paid by the applicant. This fee contributes toward the cost of processing this application and maintaining any licence issued. In the event that the application is refused a proportionate refund would be due.

CONSULTATION

32. Consultation on this application has been undertaken in accordance with the Council's established procedure for dealing with applications for the renewal of public entertainment licences.

EQUAL OPPORTUNITIES IMPLICATIONS

33. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

AGENDA 21 IMPLICATIONS

34. In considering the application the Committee will have regard to noise emissions from the premises; likely disturbance of residents caused by patrons leaving the premises; and the suitability of the premises and its location. All of these factors are relevant under Agenda 21.

REPORT OF THE BOROUGH SECRETARY & SOLICITOR - LEGAL ISSUES

35. The report recommends that the Committee decides whether to grant the application made by Mr Ahmed Yilmaz for the renewal of the annual weekday and Sunday public music and

dancing licence in respect of the premises known as Yilmaz Kebab House, 19 Lordship Lane, SE22.

36. The Committee has wide powers under Section 52 and Schedule 12 of the London Government Act 1963 to grant music and dancing licences subject to such terms, conditions and restrictions as they may specify. The Committee may impose standard rules of management for places of public entertainment in their entirety. The Committee may not, however, impose conditions concerning the sale of alcohol as this is within the jurisdiction of the local licensing justices.
37. In hearing this matter, the Committee are under a duty to consider the application on its merits and in accordance with the rules of natural justice. Any decision made must be one which is not incompatible with a convention right and must be in accordance with the Human Rights Act 1998. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. Secondly, the Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
38. In considering this application, the Committee are subject to a duty to ensure the health and safety of all citizens and residents in the Borough, which will include normal uses of the premises and residences around and within its area. The Committee are therefore entitled to consider the suitability of the applicant and the premises including their locations and impact upon the environment in the surrounding area and upon the amenity issues of granting the licence and its effects upon local residents.
39. The Committee are entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is inadmissible and should be excluded.

BACKGROUND PAPERS

40. Background papers, which include Schedule 12 of the London Government Act 1963 and the premises case file (ELU/YILMAZ), are kept at the Environment & Leisure Department, Licensing Unit, Chaplin Centre, Thurlow Street, SE17 2DG and may be viewed by arrangement with Diane Kraus who can be contacted on telephone number 020 7525 5688.

AUDIT TRAIL

Lead Officer	<i>Tim England</i>	
Report Author	<i>Diane Kraus</i>	
Version	<i>Final/complete version of the report.</i>	
Dated	24 February 03	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Noise Team	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services		24/02/03