

Agenda item	8.1
Report no	HLC/047/19

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 6 August 2019

Report title: Application for the grant of a late hours catering licence – Flamez Takeaway, 4-6 Drummond Street, Inverness (Ward 14 – Inverness Central)

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive summary

1.1 This report relates to an application for the grant of a late hours catering licence.

This item is subject to a formal hearing procedure.

2. Recommendation

2.1 Members are asked to determine the variation application in accordance with the Council's Hearings Procedure.

3. Background

3.1 The Highland Council has resolved that in terms of the Civic Government (Scotland) Act 1982 a licence will be required for the operation of a premises for late hours catering. A licence for the same is required for any premises selling food between 11.00pm and 5.00am.

4. Application

4.1 On 20 December 2018 Flamez Inverness Ltd. applied for the grant of a late hours catering licence in respect of the premises at Flamez Takeaway, 4-6 Drummond Street, Inverness.

4.2 The hours of trade applied for are within policy.

4.3 In terms of the abovementioned Act the Licensing Authority have nine months from receipt of the application to determine the same, therefore this application must be determined by 19 September 2019. Failure to determine the application by this time would result in the application being subject of a 'deemed grant' which means that a licence would require to be issued to the applicants for a period of 1 year. The application is before this Committee as this is the last meeting before the determination date expires.

5.0 Consultation

5.1 Following receipt of the variation request the following Agencies/Services were consulted:

- Police Scotland
- Fire Service
- Environmental Health Service
- Building Standards Service
- Planning Service

5.2 No objections or representations have been received from Police Scotland, Fire Service, Building Standards Service or the Planning Service.

5.3 The Environmental Health Service have advised that a number of items of work require to be undertaken and certification/documentation submitted before they can sign off the licence application. A copy of their report is attached in Appendix 1.

5.4 A copy of the Environmental Health report was sent to the applicants on 8 April 2019 and they were provided with an opportunity to address the items detailed to allow the Environmental Health Service to sign off.

5.5 The Licensing office wrote to the applicant on 1 May and again on 20 June 2019 asking for an update on progress but no response has been received.

5.6 In view of this the Principal Solicitor is unable to grant the licence using delegated powers and, as intimated in paragraph 4.3 above, the timescale for determining the application is due to expire on 19 September 2019.

5.7 A copy of this report has been sent to the applicants who, pursuant to Paragraph 4(2) of the Civic Government (Scotland) Act 1982, have been invited to attend and will be provided with an opportunity to be heard by the Committee. They have also been advised of the procedure which will be followed at the meeting.

6. Determining issues

6.1 Paragraph 5(3) of Schedule 1 of the Act states that a licensing authority may refuse an application to grant or renew a licence where:

- (a) the applicant or anyone else detailed on the application is not a fit and proper person;
- (b) the activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;
- (c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to
 - (i) the location, character or condition of premises or the character or condition of the vehicle or vessel,
 - (ii) the nature and extent of the proposed activity,
 - (iii) the kind of persons likely to be in the premises, vehicle or vessel,
 - (iv) the possibility of undue public nuisance, or
 - (v) public order or public safety; or
- (d) there is other good reason for refusing the application.

6.2 If required the Principal Solicitor – Regulatory Services will offer particular advice on the criteria relating to this particular application.

7. Policies

7.1 The following policies are relevant to this case:

Standard late hours catering licence conditions. A copy of these can accessed at https://www.highland.gov.uk/directory_record/738740/late_hours_catering/category/499/shop_and_trader or a hard copy can be supplied where requested.

8. Implications

8.1 Not applicable.

Date: 1 July 2019

Author: Michael Elsey

Background Papers: Civic Government (Scotland) Act 1982

Appendices: Appendix 1 – Report from Environmental Health

**Community Services Environmental Health
Late Hours Catering Licence Application
Schedule of Observations and/or Objections**

Applicant:	Mian Khalid
Premises to be Licenced	Flamez, Inverness
EH Flare Ref	SRU-137830

No	Licence Requirement	Comment
1	Licensing objective To ensure there is no undue public nuisance, public order or public safety.	<p>The business to which this licence application relates has been inspected within the last month by an Environmental Health Officer and had been given an "Improvement Required" rating in terms of the Council's Food Hygiene Information Scheme.</p> <p>The applicant was provided the opportunity to address the non-compliance issues over a period of 7 days prior to our consultation response. Despite this opportunity, the non-compliance issues remain outstanding and a Hygiene Improvement Notice was subsequently issued.</p> <p>In view that the nature of the non-compliances issues are considered significant and likely to be exacerbated by the granting of this licence, our Service would wish to formally object to this licence application. Our Service would remove our objection when these significant non-compliance issues have been satisfactorily addressed.</p> <p>A copy of the food hygiene inspection letter and the Hygiene Improvement Notice are attached.</p>
2	Licensing objective To ensure there is no undue public nuisance, public order or public safety	<p>The applicant is required to present an up to date electrical report which states that the electrical installation is in a satisfactory condition. The report should be in the format prescribed in Appendix 6 of BS 7671. The required format is an Electrical Installation Condition Report. The form should be completed in accordance with the relevant Best Practice Guide on classification codes published by the Electrical Safety Council. For a completely new installation an electrical installation certificate is the appropriate format. The certificate will require to be signed by a qualified person who is</p> <ul style="list-style-type: none"> <input type="checkbox"/> A professionally qualified electrical engineer <input type="checkbox"/> A member of the Electrical Contractors Association <input type="checkbox"/> A member of the Electrical Contractors Association of Scotland <input type="checkbox"/> A certificate holder of the National Inspection Council for Electrical Installation Contracting <input type="checkbox"/> A Certificate Holder of the Scottish Electrical Certification (SELECT) scheme
3	Licence Conditions 7&8 - LH Catering	<p>The applicant is required to confirm that satisfactory arrangements are in place for the disposal of litter and other refuse arising from the undertaking. This should include confirmation of where bins are stored, their appointed waste contractor, and the frequency of collection.</p> <p>Where an application is to open after 1.00am in settlements which have late opening liquor licences (i.e. after 1.00 am), then additional information is required to demonstrate the arrangements in place for litter picking and cleaning around the frontage of the premises.</p> <p>The applicant should complete and return the pro-forma accompanying the Late</p>

Form LHC4

	Hours Catering Application Guidance Notes to assist in the assessment of their arrangements.
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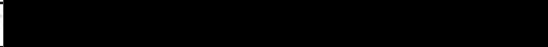
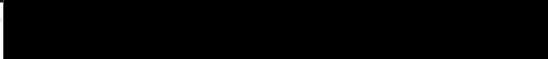
Objection

I would confirm that our Service would wish to formally object to this licence application as we consider that it would be inconsistent with one or more of the licence committee's primary objectives for the reasons described above.

Where appropriate our Service has attached copies of relevant letters and inspection reports.

If the applicant provides the required information and certificates then our Service will remove our objection

Should you require a representative from our Service to attend the Licensing Committee to clarify any of the above matters further, please do not hesitate to contact this office.

EH Officer	Barry Cumming
Position	Environmental health Officer
Signed	
Date	



Mian Khalid
Flamez
4-6 Drummond Street
Inverness
IV1 1QD

Please ask for: **Barry Cumming**
Direct phone: 01463 644 608
Direct Email: barry.cumming@highland.gov.uk
Your ref:
Our ref: 056027 / BCU00200
Date: 29/03/2019

Dear Sir

**FOOD SAFETY ACT 1990
FOOD HYGIENE (SCOTLAND) REGULATIONS 2006
THE FOOD INFORMATION (SCOTLAND) REGULATIONS 2014**

PREMISES: Flamez, 4-6 Drummond Street, Inverness, IV1 1QD

I refer to the inspection of the above premises on 28/03/2019, and to my discussions with Mr Bashir at that time.

This schedule contains **contraventions** and **recommendations**. **Contraventions** are items that must be addressed to ensure your compliance with the above legislation. **Recommendations** are items I strongly recommend be adopted as good practice although they are not direct requirements in terms of the above regulations. All recommendations appear in *italic* type. When considering work to deal with contraventions there may be other ways of achieving compliance with the law than those I have suggested. Alternatives may be used provided they are of equivalent effect. If you are in doubt as to the acceptability of alternatives please contact me.

The attached schedule details the outcome of the inspection. Any contraventions identified in the schedule require your immediate attention.

The Food Hygiene Information Scheme

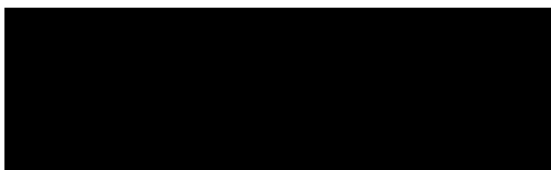
I must inform you that, due to the presence of outstanding food hygiene compliance issues, your business has attained an **"Improvement required"** standard.

If your business attends to the outstanding hygiene compliance issues you should contact the inspecting officer at the address above in order to arrange a re-visit. A **"Pass"** certificate will be issued provided that there is clear evidence that compliance has been achieved.

Should you disagree with the requirements of the enclosed Schedule you should make representation to Alan Yates, Environmental Health Manager, within two weeks of receipt of this letter by writing to the address below or calling 01463 644570. The booklet "Food Law Inspections and Your Business" outlines your rights and is available from this office on request.

If you require any further information or advice please do not hesitate to contact me on the above number.

Yours faithfully



BARRY CUMMING
Environmental Health Officer
Environmental Health

Schedule

**FOOD SAFETY ACT 1990
FOOD HYGIENE (SCOTLAND) REGULATIONS 2006
THE FOOD INFORMATION (SCOTLAND) REGULATIONS 2014**

Premises Name: **Flamez**
Premises Address: **4-6 Drummond Street, Inverness, IV1 1QD**
Type of Premises: **Take-away
Catering, Restaurants, Bars
R01 Takeaway Food**
Date and time of Inspection: **28/03/2019 at 17:30**
Type of Inspection: **Food Hygiene**

Areas Inspected: **All**
Records/Documents examined: **None**
Samples Procured: **None**

Note

This schedule only covers the areas inspected as they were found at the time of the inspection. It should not be inferred that all hazards and defects within the premises have been identified. The responsibility for complying with legislation lies with the proprietor and your own checks should be carried out as a matter of routine.

Please note that Regulation 17 of the Food Hygiene (Scotland) Regulations 2006 makes it an offence to contravene or fail to comply with the requirements of EC Regulations 852/2004 and 853/2004. Regulation 4 of the General Food Regulations 2004 makes it an offence to contravene or fail to comply with the requirements of EC Regulations 178/2002.

- 1) You have failed to:
- identify steps in the operation of this business which are critical to ensuring food safety;
 - put in place practices and procedures which would control potential problems.

In particular, the following matters were noted during my inspection:

You have no records for delivery checks; cooking, hot-holding or cold temperature checks. Nor are there any defined, or apparent cleaning, training, personal hygiene, cross-contamination or stock control house rules.

[Regulation (EC) 852/2004 Article 5 Paragraph 1]

In order to comply with this element of the legislation you need to show some evidence that you have thought about your business procedures and identified significant hazards and know how to control them.

I would strongly recommend that you follow the guidance contained in the document CookSafe, issued by the Food Standards Agency Scotland (FSAS), to guide you through compliance issues. Further information on the CookSafe management procedure is available from this service or from the FSS website - www.foodstandards.gov.scot.

2) The floor, splash guards and walls downstairs are dirty. These must be thoroughly cleaned and maintained in a clean condition.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter I Paragraph 1]

3) None of the fridges and freezers (both downstairs and upstairs) were satisfactorily clean. These require to be cleaned thoroughly (inside and out, including the door seals) to minimise any risk of contamination of food.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter V Paragraph 1(a)]

4) The downstairs sinks were also dirty. These must be thoroughly cleaned (and disinfected) and maintained in a clean condition.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter V Paragraph 1(a)]

5) I understand that you clean the tubs holding marinating chicken using a detergent only. *You should employ the following 2- stage clean for equipment:*

Stage 1: General Cleaning Using a Detergent

Chemical cleaning involves the physical removal of visible dirt, food particles and debris from surfaces and equipment that come into contact with food, along with the removal of waste from areas where food processing occurs. The detergents selected for use in each situation must be capable of removing all food debris solids and grease. General cleaning should always be completed by rinsing to ensure thorough removal of all residues from the surface prior to Stage 2.

Stage 2: Disinfection

Disinfectants that have been proven capable of destroying disease-causing bacteria should be applied after general cleaning to reduce microbial contamination to an acceptable level. Disinfection can only be successfully carried out on surfaces that have been thoroughly cleaned to remove grease and dirt, as the effectiveness of disinfection is reduced in the presence of food matter.

Different types of disinfectants require different dilutions and contact times. These are specified and validated by the manufacturer and you must follow the manufacturer's instructions for dilution and contact time to ensure the product is effective. Disinfection should be followed by a final rinse of the surface or equipment with potable water to remove any remaining chemical, unless it is formulated for use without a final rinse.

6) The red food mixer downstairs was dirty. This must be thoroughly cleaned (and disinfected) and maintained in a clean condition.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter V Paragraph 1(a)]

7) A large number of collapsed boxes were on the raw meat table and on the floor adjacent to this area. These should be removed and adequate arrangements for storage and disposal of waste must be made.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter III para 2(f)]

8) *At the time of inspection cumin and oregano were being stored in open packets. Where possible all foodstuffs should be transferred into lidded containers after opening or the packaging should be folded over and sealed to prevent contamination. This will also protect food from insects and reduce food spillage which might attract pests.*

9) It was noted that none of the wash hand basins were in regular use (several, including the one in the toilet, had missing soap and/or drying paper). Regular hand washing is important for personal cleanliness. All staff must be reminded of the need for this prior to starting or returning to work, and specifically:

- a) After using the toilet;
- b) After handling rubbish;
- c) After smoking;
- d) After taking a break;
- e) After handling raw food.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter VIII Paragraph 1]

10) There is a dirty cardboard box covering part of the floor in the toilet. You are required to renew or repair this floor covering to ensure it presents a sound easy to clean condition.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter 1 Paragraph 1]

11) All areas where food is prepared and stored must be clean and capable of being kept clean. This is to minimise the risk of pests being attracted into your premises and the risk of food being contaminated by dirt. At the time of inspection, there was no sanitizer at the downstairs sinks - you should have detergent and sanitizer available for use throughout your business.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter I Paragraph 1]

12) At the time of inspection, a bucket of dirty water was next to the dry goods storage area. Cleaning equipment such as mops, buckets and brooms must be stored in an area, room or cupboard separate from food preparation or storage areas to ensure that the risk of food contamination is minimised.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter IX Paragraph 3]

13) *Raw and marinating chicken was stored in one fridge downstairs. I understand that fresh chicken is delivered on a Wednesday and that you anticipate selling it all in a few days. However, there was no date coding on the containers, and no evidence of stock control/rotation was apparent. I recommend you introduce a system of date coding for high-risk foods to ensure stock is rotated and is not used beyond its shelf-life.*

14) From our discussions, I understand that in the serving/cooking area upstairs only sanitizer is used to wipe down work surfaces. You should cease to use the sanitiser as a single stage cleaning process. Sanitisers combine both cleaning and disinfection properties in a single product. However when used in a single stage process these products are only suitable as an interim "clean as you go" measure and never as a disinfection control for cross contamination. Single stage use of sanitiser is not sufficient to ensure thorough and effective disinfection to microbiologically safe standards in relation to controlling E.coli O157 cross contamination.

You should either change to a 2 stage process using the existing sanitiser or move to a separate detergent and disinfectant meeting the appropriate BS EN standard.

[Regulation (EC) No 852/2004, Annex II, Chapter V, paragraph 1(a)]

[Regulation (EC) No 852/2004, Chapter 1, Article 5, paragraph 1]

[Regulation (EC) No 852/2004, Chapter 1, Article 5, paragraph 2(b)]

15) There was a filter missing from one of your extraction canopies. Appropriate filters must be installed immediately to reduce nuisance from odours and avoid grease accumulating in inaccessible parts of the ducting.

[Regulation (EC) 852/2004 Article 4(2), Annex II, Chapter I Paragraph 5]

16) The extractor canopy above the kebab cooking spit was in a dirty/greasy condition. It must be thoroughly cleaned and maintained in a clean condition.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter I Paragraph 1]

17) *Flour and breadcrumbs and seasoning were stored in open containers beneath the till. I recommend you cover all foods during storage to minimise the risk of contamination.*

18) *It is recommended that you use a temperature probe to test the temperature of freezers, fridges, cooked, hot held and re-heated foods. You must ensure that probe thermometers do not contaminate or taint the food being probed. Make sure probes are kept clean and disinfected before use with ready to eat food, otherwise probed food must be discarded. Where antibacterial wipes are used, these must be suitable for use with food.*

19) The marbled surface on the display fridge used for milk and sauces was broken and cannot be adequately cleaned. You are required to repair/renew it to allow it to be thoroughly cleaned and where necessary disinfected. Alternatively, remove it from the fridge.

[Regulation (EC) No 852/2004 Article 4(2), Annex II, Chapter V Paragraph 1 (b)]

20) As discussed at the inspection, please provide copies of the gas safe certificates and electrical safety certificates for your equipment and your staff training certificates.



Reference No:
HIN/19/INBS/BC/254

**FOOD HYGIENE (SCOTLAND) REGULATIONS 2006
REGULATION 6**

HYGIENE IMPROVEMENT NOTICE

1. To: **Mr QAMMAR BASHIR**

At: **Flamez, 4-6 Drummond Street, Inverness, IV1 1QD**

2. In my opinion the: **food safety practices and procedures**

At your food business known as **Flamez**

at **4-6 Drummond Street, Inverness, IV1 1QD**

failed to comply with the Hygiene Regulations (as defined in regulation 2(1) of the Food Hygiene (Scotland) Regulations 2006) because:

you have failed to put in place, implement or maintain a Food Safety Management System based on HACCP (hazard analysis and critical control point) principles in contravention of Regulation (EC) No 852/2004 Chapter II, Article 5 (1) and (2) and hence is contrary to Regulation 17 of the Food Hygiene (Scotland) Regulations 2006.

3. In my opinion, you must take the following measures in order to comply with the Hygiene Regulations described at paragraph 2 of this notice:

You are required to put in place, implement and maintain a permanent food safety management procedure or procedures based on the HACCP principles. The HACCP principles referred to consist of the following:

- a) identifying any hazards that must be prevented, eliminated or reduced to acceptable levels, (e.g. the transfer of bacteria from raw to cooked meat, or the presence of foreign material such as glass or plastic in food);**
- b) identifying the critical control points at the step or steps at which control is essential to prevent or eliminate a hazard or to reduce it to acceptable levels (e.g. places where cross-contamination between raw foods and ready-to-eat products may occur, the cooking of raw meat or the use of sanitised equipment);**
- c) establishing critical limits at critical control points which separate acceptability from unacceptability for the prevention, elimination or reduction of identified hazards (e.g. the time and temperature required when cooking meat to kill all of the bacteria right through to the middle of the joint or the safe temperature for refrigerated food);**
- d) establishing and implementing effective monitoring procedures at critical control points;**
- e) establishing corrective actions when monitoring indicates that a critical control point is not under control (e.g. what to do when monitoring shows that something has gone wrong);**
- f) establishing procedures, which shall be carried out regularly, to verify that the measures outlined in subparagraphs (a) to (e) are working effectively; and**
- g) establishing documents and records commensurate with the nature and size of the food business to demonstrate the effective application of the measures outlined in subparagraphs (a) to (f). When any modification is made in the product, process, or any step, food business operators shall review the procedure and make the necessary changes to it.**

4. The measure or measures referred to in paragraph 3 of this notice (or measures at least equivalent to those specified) must be taken by **26th April 2019**. It is an offence not to comply with this notice by the specified date.

Signed:

..... Authorised Officer

Name in Capitals: BARRY CUMMING

Date: 5th April 2019

Highland Council, Community Services, Environmental Health, 38 Harbour Road,
Inverness. IV1 1UF

Tel: 01463 644570

***Please read the notes overleaf carefully.
If you are not sure of your rights or the implications
of this notice, you should seek legal advice.***

NOTES

1. In the opinion of the authorised officer you are not complying with the Hygiene Regulations as described in paragraph 2 of the notice. In the officer's opinion to put matters right you must undertake the work described in paragraph 3 of the notice and it must be finished by the date stated in paragraph 4 of the notice.
2. You are responsible for ensuring that the work is carried out within the period specified.
3. There is no specific provision in the Food Hygiene (Scotland) Regulations 2006 to extend the time limit on an Improvement Notice. However, Local Authorities will consider sympathetically any request for more time where there is a genuine reason. Such requests should be made in writing before the expiry date of the Notice.
4. You have the right to carry out work that will achieve the same effect as that described in the notice. If you think that there is another equally effective way of complying with the law, you should first discuss it with the officer.

Your Right of Appeal

5. In accordance with Regulation 20 of the Food Hygiene (Scotland) Regulations 2006, if you disagree with all or part of this notice, you can appeal to the Sheriff. You must appeal within one calendar month of the date of the notice or the period ending with the date stated in paragraph 4 of the notice, whichever ends earlier. You may wish to seek independent legal advice in connection with any appeal.
6. If you decide to appeal, the time set out in the notice is suspended and you do not have to carry out the work described until the appeal is heard. However, if you are not complying with the Regulations mentioned in the notice, you may still be prosecuted for failure to comply with those Regulations.
7. When the appeal is heard the Sheriff may confirm, cancel or vary the notice.
8. Appeals should be made to:
Sheriff Clerk's Office, The Court House, The Castle, Inverness. IV2 3EG.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisoned for up to 2 years