

Agenda Item No: 1 - Summary of Report

Licence Reference 12/02019/LAPRE

**Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)**

Date: 16TH JULY 2012

**Report Title: MILANO'S PIZZA
34 HIGH STREET
MAIDSTONE
KENT
ME14 1JH**

**Application for: A premises licence to be granted under the
Licensing Act 2003**

Report Author: Lorraine Neale

Summary:

1. The Applicants – Wahidulla Masoudi
2. Type of authorisation applied for: a premises licence under the Licensing Act 2003, S17.
3. Proposed Licensable Activities and hours:

| | | | |
|----|------------------------|------------------|----------------|
| L) | Late Night Refreshment | Monday to Sunday | 23:00 to 05:00 |
| O) | Opening Hours | Monday to Sunday | 11:30 to 05:00 |

Affected Wards: High Street

Recommendations: **The Committee is asked to determine the application and decide whether to grant a licence.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Financial Implications: Costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application it is appropriate to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**interested parties**” (objectors). The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Documents issued under section 182 of the Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

Contacts: Mrs Lorraine Neale at: lorraineneale@maidstone.gov.uk – tel: 01622 602028

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KENT, ME14 1JH**

**Application for: A premises licence to be granted under the
Licensing Act 2003**

Purpose of the Report

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Wahidulla Masoudi, in respect of the premises Milano's Pizza, 34 High Street, Maidstone, Kent, ME14 1JH in respect of which 1 representation (Appendix C) has been received from an Interested Party

Issue to be Decided

1. Members are asked to determine whether this application relates to an excluded premises and if not determine whether to i) grant subject conditions consistent with the operating schedule modified to such extent as considered appropriate for the promotion of the licensing objectives and any mandatory condition, ii) grant excluding any of the licensable activities applied for, iii) grant refusing to specify a premises supervisor, or iv) reject the application.

Background

2. The relevant sections are Part 3 ss 16-18, 23 & 24, of The Licensing Act 2003 and section 4 of The Licensing Act 2003 in particular the Licensing Objectives:
 - The prevention of crime and disorder;
 - Public Safety
 - The prevention of public nuisance; and
 - The protection of children from harm
3. The application has been correctly advertised in the local press and a notice displayed on the premises for the required period.
4. 1 representation was received from an Interested Party
5. The table below illustrates the relevant representation which has been received

| Responsible Authority/Interested Party | Licensing Objective | Associated Documents | Appendix |
|---|----------------------------|-----------------------------|-----------------|
| J H Zhao | Public Nuisance | Letter | C |

6. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is appropriate to do so to promote the licensing objectives.;**
7. **The Operating Schedule submitted by the Applicant has addressed the licensing objectives in the following manner:**

a) General – all four licensing objectives

I WILL COMPLY WITH ANY REASONABLE DEMANDS MADE OF ME BY ANY RELEVANT AUTHORITY TO OPERATE A SUCCESSFUL AND ORDERLY TAKE-AWAY BUSINESS.

b) The prevention of crime and disorder

THE SHOP HAS FULL CCTV COVERAGE BOTH INTERNALLY AND EXTERNALLY AND WHICH CAN BE MADE AVAILABLE TO THE AUTHORITIES. THERE ARE NORMALLY THREE MALE STAFF ON THE PREMISES.

c) Public safety

AS B.

d) Prevention of public nuisance

AS B..

e) The protection of children from harm

WE DO NOT HAVE CHILDREN COME INTO THE SHOP NOR WOULD WE ALLOW THEM

The Police initially made representation which was received on 26.6.2012 (Appendix D), Wahidulla Masoudi agreed to the amendment of the operating schedule to include the following conditions to be attached to the licence as part of their application:

- CCTV to be fitted to a standard agreed to by the police that complies with the CCTV Code of Practice (2008 edition), produced by the Information Commissioners Office, with all public areas, including all access and egress points covered.
- The CCTV system will be maintained and serviced on a regular basis and records kept to that effect.
- CCTV shall be operational at all times that members of the public and or staff are on the premises.
- Images will be retained for a period of at least one calendar month by whatever means the licence holder deems appropriate
- The Police or Local Authority will be allowed to take a recording by way of tape, CD Rom, DVD, Memory stick or any other appropriate means of the image within 48hrs of the initial request being made by either the Police or Local Authority.
- Signage will be displayed in the shop that CCTV is in operation.
- The premises will become members of the "Nite Net Radio" system and a member of staff will monitor the Nite Net Radio at all times that the premises are trading.
- Staff at the premises will ensure that all rubbish is cleared from the front of the shop at the end of each day that the premises are trading for late night refreshment.

8. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003; Chapters 8 & 9 Premises Licences & Determining Applications**

Chapter 10 Conditions Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy**:

22. Prevention of Public Nuisance

22. Prevention of Public Nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Licensing Authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:-

- The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
- The hours of operation, particularly if between 23.00 and 07.00.
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
- The design and layout of premises and in particular the presence of noise limiting features.
- The occupancy capacity of the premises.
- Last admission time.
- The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly.
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises.
- Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting that is installed inappropriately.
- Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance.
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries.
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- Effective ventilation systems to prevent nuisance from odour.

N.B. Where relevant representations are received which the Licensing Sub Committee consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

9. **Options**

Legal options open to members -

- a) GRANT the licence subject to such conditions as are consistent with the operating schedule accompanying the application; MODIFIED to such extent as the Licensing sub-committee considers appropriate for the promotion of the licensing objectives and any relevant mandatory condition
 - b) EXCLUDE from the licence any of the licensable activities applied for.
 - c) REFUSE to specify a person in the licence as premises supervisor
 - d) REJECT the application.
10. Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co – operate in the reduction of crime and disorder in the Borough

Section 17 of the Crime and Disorder Act 1988 states:

"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 various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can prevent, crime and disorder in its area".

11. **Implications Assessment**

The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased.

12. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to Fair Hearing
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices

13. Conclusion

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

14. List of Appendices

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|------------|---|
| Appendix A | Application Form |
| Appendix B | Plan of Premises |
| Appendix C | Representations (Interested Parties) |
| Appendix D | Police representation and agreement of conditions |
| Appendix E | Plan of area |
| Appendix F | Human Rights Articles |
| Appendix G | Order of Proceedings |

15. Appeals

The applicant or any interested party (objector) may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Costs Order should they bring an appeal.

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| Contact: Email: | Senior Licensing Officer lorryneale@maidstone.gov.uk |
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