



## LICENSING AND GAMBLING SUB COMMITTEE - 20<sup>TH</sup> JULY 2023

**SUBJECT: DETERMINATION OF PREMISES LICENCE APPLICATION**

**REPORT BY: LEE MORGAN LICENSING MANAGER**

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### 1. Application Details –

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Mr Awat Khazri	Pizza Bites 2b Penallta Road, Ystrad Mynach, Hengoed, CF82 7AP	New Premises licence

#### 1.1 Application for Grant of a New Premises Licence

An application has been submitted to apply for a new premises licence for the above premises. The proposed application for consideration is set out in 1.3 of this report.

#### 1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

A location plan is reproduced as **Appendix 2**.

Photographs of the location are reproduced as **Appendix 2a**

#### 1.3 Proposed Trading Times and Licensable Activity

The application for the grant of a Premises Licence sought to permit the following Licensable Activities:-

- **Late Night Refreshment (LNR) – (Indoors only)**
- Sunday to Thursday 23.00 to 24.00  
Friday to Saturday 23.00 to 01.00

Members will note that Late Night Refreshment applies to the supply of hot food or drink between the hours of 23.00-05.00hrs.

A general description of the proposed premises has been provided as “*we are a fast food takeaway serving kebab, burgers, pizzas, drinks and a small selection of deserts. We have a delivery service and collection option.*”

**1.3.1** The following steps have been volunteered by the applicant as part of the Operating Schedule, to promote the Licensing Objectives, and are reproduced directly from the Application:-

- 1. The cctv will be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards. The system shall also record clear images permitting the identification of individuals.*
- 2. A clear notice shall be displayed at any exit to the premises to instruct customers to respect the needs of local residents and leave the premises and area quietly.*
- 3. Children must be accompanied by a responsible adult after 22.00 hrs . Staff doors will also be locked so children can not enter the kitchen*
- 4. The cctv will be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards. The system shall also record clear images permitting the identification of individuals.*

**1.3.2 Existing Late night refreshment establishments in vicinity.** Licensing Authority records indicate the following premises possess the ability to provide late night refreshment.

Name	Address	Permitted Times	Distance away
Chicken & Pizza Land	7 Commercial Street, Ystrad Mynach	Mon – Sun Midnight	86 metres
Lucky Valley	14 Commercial Street, Ystrad Mynach	Sun – Thurs 23.30 Fri – Sat Midnight	93 metres
Viceroy of India	12-14 Penallta Road, Ystrad Mynach	Sun – Thurs Midnight Fri – Sat 01.00	89 metres

#### **1.4 RELEVANT CONSIDERATIONS**

Caerphilly County Borough Council Licensing Policy **Appendix 3**

National Guidance **Appendix 4****1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS****1.5.1 Responsible Authorities:**

The following responsible authorities have indicated that they have no representations in respect of the proposed new premises licence:-  
South Wales Fire & Rescue Service, Child Protection Officer and Environmental Health (Health & Safety).

**Environmental Health Pollution**

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>16/06/2023</b>	<b>Appendix 5</b>
<b>Supplementary Comments</b>	<b>29/06/2023</b>	<b>Appendix 5a</b>

**Trading Standards**

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>27/06/2023</b>	<b>Appendix 6</b>

**Police**

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>28/06/2023</b>	<b>Appendix 7</b>

**Licensing Authority in role as Responsible Authority**

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>29/06/2023</b>	<b>Appendix 8</b>

**1.5.2 Other Persons:****Elected Member**

Document	Date Received	Appendix Reference
<b>Cllr Angel Representation</b>	<b>12/06/2023</b>	<b>Appendix 9</b>

**Residents**

Document	Date Received	Appendix Reference
<b>Resident A Representation Ms Wood</b>	<b>16/06/2023</b>	<b>Appendix 10</b>
<b>Resident B Representation Mr Richards</b>	<b>19/06/2023</b>	<b>Appendix 11</b>
<b>Resident C Representation Mr Enright</b>	<b>26/06/2023</b>	<b>Appendix 12</b>

**Community Council**

Document	Date Received	Appendix Reference
<b>Community Councillor C Mortimer</b>	<b>26/06/2023</b>	<b>Appendix 13</b>

## **1.6 SUMMARY OF REPRESENTATIONS**

There were a number of representations objecting to the application during the 28day consultation period. All such comments were forwarded to the applicant for his consideration and comment.

Representations were received from the Environmental Health Pollution Officer who detailed her objection to the application with concerns in respect of the promotion of the prevention of public nuisance licensing objective. Reference is made to complaints received from local residents regarding noise from the premises, noise from delivery drivers, shouting and anti-social behaviour.

The Environmental Health Officer makes reference to any hours of trading beyond 11pm will have a detrimental effect on residents, the location of the premises is deemed unsuitable for the premises to be open beyond 11pm and there is no appropriate mitigation which could minimise the risk of public nuisance. The Environmental Health Officer comments that the above disturbances cannot be reduced to a reasonable level by conditions attached to the operating schedule. Further comment is made about the applicant's failure to respond to correspondence from the Environmental Health Officer following recent complaints.

The Trading Standards Officer supported the concerns of the Environmental Health Officer detailing recent interaction with the applicant which includes complaints concerning the breaching of permitted hours which includes an ongoing investigation. The Trading Standards Officer details that it is a location which is attractive to youths to congregate and after closure of the premises, staff from the business tend to congregate with others in the Street.

Gwent Police have conducted a site visit and met with the applicant, who agreed to address a number of issues highlighted at the premises which included to increase the CCTV coverage, remove a settee inside the premises to prevent persons loitering on the premises and prevent anti-social behaviour. The applicant was advised that delivery drivers attending to collect orders behave in a respectful manner and should not play loud music or use their vehicle horns outside the premise, the applicant was asked to consider curtailing the hours applied for to midnight (00:00) in line with other late night refreshment establishments and this was declined by the applicant, Gwent Police do not object to the whole application, and propose the premises closes in line with other late night refreshment premises.

Gwent Police have carried out a search on the Police systems specific for Penallta Road which has 40 reported incidents between June 2022-June 2023, which equates to 11 crimes and 29 reports of antisocial behaviour.

Licensing Authority in their role as a Responsible Authority have provided their representations and detailed their objections in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. A site visit was conducted along with Gwent Police Officers and the location of the premises and the close proximity to residential properties raised concerns given the hours applied for.

Comment is made concerning the premises location and the provision of a delivery service, all of which are likely to cause a public nuisance to nearby residents, noise from patrons leaving the premises, light pollution and litter problems and has the potential to impact adversely on the licensing objectives.

The Licensing Authority is also aware of complaints received regarding the use of the premises after 11:00 pm and the investigations recently undertaken by colleagues within the Trading Standards Department.

The Licensing Authority detailed an objection to the application in its current form and would support the representations submitted by other Responsible Authorities.

The Elected Member for the area has objected to the application detailing his concerns in respect of youths which are gathering late at night and antisocial behaviour being experienced by residents.

Resident Ms Wood wishes to object to the application sighting concerns about the increased chances of nuisance arising, if allowed to open later.

Resident Mr Enright detailed concerns given his proximity to the premises and exiting issues being experienced describing it as a “nightmare.” Mr Enright raised concerns with the litter from discarded food containers outside the premises, along with the impact on noise levels from cars revving and the use of car horns late at night and past midnight which it was indicated “have become the norm”.

Mr Enright detailed that an employee from the premises had been witnessed urinating up against the side of the building after the premises was shutting up, he describes the Town centre as “sleepy” after 10pm and raises concerns with persons from outside the area being attracted to the premises.

Resident Mr Richards highlighted a number of concerns which included high volumes of music, screaming and shouting and the emptying of bins all of which occur late at night. Mr Richards detailed issues regarding litter from the premises being discarded in the lane outside his home, furthermore, issues around delivery vehicles blocking his access to his home.

## **1.7 APPLICANT RESPONSE**

The applicant has responded to the comments of Heddlu Gwent Police to accept revised conditions proposed by the Police should a licence be granted. However, the applicant does not agree with the Police position in relation to permitted hours and a Midnight cessation of late-night refreshment. To date, no response has been received in relation to the comments submitted by other Responsible Authorities or Interested Parties.

## **1.8 LICENSING ASSESSMENT**

THE LICENSING ASSESSMENT IS A PROVISIONAL SUMMARY, BASED ON REPRESENTATIONS RECEIVED PRIOR TO THE HEARING. THE HEAD OF PUBLIC PROTECTION, COMMUNITY AND LEISURE SERVICES RESERVES THE RIGHT TO AMEND OR VARY THE PROVISIONS CONTAINED IN THE SUMMARY AND RECOMMENDATION, SUBJECT TO ANY CHANGE IN THE MATERIAL FACTS THAT BECOME KNOWN AT THE HEARING. THE SUB-COMMITTEE IS OBLIGED TO DETERMINE THIS APPLICATION WITH A VIEW TO PROMOTING THE LICENSING OBJECTIVES WHICH ARE:

- The prevention of crime and disorder;
- Public safety;

- The prevention of public nuisance;
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: THE SUB-COMMITTEE MAY NOT MODIFY THE CONDITIONS OR REJECT THE WHOLE OR PART OF THE APPLICATION MERELY BECAUSE IT CONSIDERS IT DESIRABLE TO DO SO. ANY SUCH ACTIONS MUST BE NECESSARY IN ORDER TO PROMOTE THE LICENSING OBJECTIVES.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

## 1.9 OBSERVATIONS

This application relates to the granting of a new premises licence for the purposes of the provision of late-night refreshment. Late Night refreshment is a licensable activity, this is the sale of hot food and drink after 11pm and before 5am for consumption on or off the premises.

It should be noted that no licence is required to sell hot food or drink outside of these times. Therefore, subject to the requisite planning permission, a premises could provide hot food or drink from 05.00hrs until 22.59hrs. Therefore, Members will have no ability to effect trading at this premises between these hours and can only determine whether to permit the sale of hot food and drink between 23.00hrs-until 05.00hrs.

In relation to this application, Members will note that the applicant seeks to permit late night refreshment Sunday to Thursday until Midnight and Friday and Saturday until 01.00hrs.

Representations objecting to the application for the provision of late-night refreshment have been received from the Environmental Health Pollution Team Officer in relation the promotion of the prevention of public nuisance licensing objective and the detrimental impact on residents should the premises open beyond 11pm. The Environmental Health Officer has detailed her objection to the application clarifying that the implementation of conditions would not allay her concerns in relation to the promotion of the licensing objectives.

Members are guided to paragraph 9.12 of the Section 182 National Guidance and the weight that can be afforded to the comments of Responsible Authorities which states '*Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area*'. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular

*responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

The Councils Statement of Licensing Policy at paragraph 11.1 provides guidance and states *'Licensed premises have significant potential to impact adversely on persons living and working (including those carrying on business) in the area around the premises, and also further afield through public nuisances that arise from their operation. It is therefore important that in considering the promotion of this licensing objective, Licensing Authorities and Responsible Authorities focus on the effect of the licensable activities at the specific premises on these parties which may be disproportionate and unreasonable.'*

The Section 182 National Guidance at paragraph 2.15 details the following *'The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*

Members will note that the Environmental Health Pollution Officer has detailed that in respect of this application, it is not believed that the applicant could promote the Licensing objectives, in particular the prevention of public nuisance with the attaching of conditions. Concern is expressed over a failure of the applicant to respond to correspondence concerning previous complaints. Comment is expressed that the lack of contact does not show the commitment to minimising the potential for public nuisance that would be expected from a business operating close to residential properties.

Furthermore paragraph 11.4 of the Council's Licensing policy provides further guidance namely *'The Licensing Authority expects applicants for premises licences and club premises certificates to have made relevant enquiries and considerations about the local area before submitting their application. The purpose of this is to enable the applicant to consider the most appropriate controls for potential inclusion in the operating schedule with a view to ensuring their activities do not undermine the licensing objective with regard to the prevention of public nuisance. It is important to recognise that the impacts of licensed activity are not contained within a building. Inevitably there is a wider impact as people travel to and from the premises or congregate outside whilst it is in operation. Nuisance is best managed by careful consideration of the suitability of the selected site and any necessary mitigation at an early stage.'*

Objections to the grant of the application have also been received from the Licensing Authority in its role as a responsible authority, Trading Standards and from Gwent Police (although the Police have not made an outright objection to the application, only to the proposed hours.)

Representations making objections to the granting of the premises licence have also been received from residents, who appear to live in close proximity to the premises, highlighting existing crime and disorder, antisocial behaviour, noise and litter which they appear to attribute to this premises. The resident comments appear to be reflected in complaints made to the local authority licensing, environmental health and trading standards teams.

Paragraph 28.21 of the council's licensing policy details *'Relevant representations about applications can also be made by any other person, regardless of their geographical position in relation to the relevant premises. However the Licensing Authority will usually give greater weight to representations that are made by people who can demonstrate that they would be directly affected by the carrying on of licensable activities at the premises concerned.'*

Furthermore, representations objecting to the grant of the application have been received from an Elected Member and from the Community Council.

The Trading Standards Officer has highlighted concerns in relation to complaints previously received concerning the sale of hot food / drinks after 23.00hrs in the absence of a licence. The Trading Standards Officer details that there is an ongoing investigation in relation to the same.

Given the above, it is a concern that residents have referenced in their submission concerns that the premises currently trades beyond its permitted hours i.e 23.00hrs and its opening is contributing to the local prevailing conditions within the town centre.

Concern is raised by residents about the rewarding of poor behaviour should the application be approved, with reference to the applicants alleged lack of regard to the area and poor management of the premises late at night highlighting, the emptying of bins and playing of loud music.

Members of the Sub Licensing Committee will be required to determine the application in relation to the promotion of the four licensing objectives i.e prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

## **1.10 RECOMMENDATION**

Having had regard to and considered the position of the Responsible Authorities and all comments received by other parties, it is recommended that the application for a Premises Licence for late night refreshment be **refused**. It is not considered that the promotion of the Licensing Objectives may be adequately controlled or mitigated by conditions in this instance.

In reaching this conclusion it is noted that there are objections to the prevention of public nuisance licensing objective from the Environmental Health Pollution Team, Trading Standards and Local Authority in its role as a response Authority and concerns in relation to the confidence in management of the applicant following a relatively recent complaint history. Should Members determine to grant the application for late night refreshment, then consideration should be given to the hours sought and robust conditions in order to promote the licensing objectives.

Background Papers: Links to : **Statutory Guidance issued under S182 of the Licensing Act**

### **Caerphilly CBC Statement of Licensing Policy**

Date of this report: 11<sup>th</sup> July 2023

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