

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Aylesbury Pizza, 104 High Street, Aylesbury, Buckinghamshire, HP20 1RB
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Kerryann Ashton – Licensing Officer
Report Author	Kerryann – Licensing Officer
Ward/s Affected	Aylesbury North

1. Purpose of Report

To provide Members with information enabling the determination of an application for a new Premises Licence in respect of which relevant representations have been received.

The Application has been submitted by Aylesbury Pizza Ltd in respect of Aylesbury Pizza, 104 High Street, Aylesbury, Buckinghamshire, HP20 1RB (the premises).

2. Background

2.1 This licence application is in respect of a takeaway pizza business on the ground floor of a three-story building close to Aylesbury town centre. The premises is located at the end of a small parade of ground floor commercial units, with residential dwellings above. Immediately to the west is a residential development with multiple apartments.

A location plan showing the premises location is attached to this report marked **Appendix 1**.

3. The Application

3.1 This application is for a new Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application is attached to this report marked **Appendix 2**. A plan of the premises is attached as **Appendix 3**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
Late Night Refreshment	Sunday to Thursday 2300 – 00 00 Friday to Saturday 2300 – 04 00
Hours premises are open to the public	Not stated

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** No representation
- 4.1.2 **The Licensing Authority:** Representation received. A copy of the representation is attached as Appendix 4.
- 4.1.3 **The Fire and Rescue Authority:** No representation
- 4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received - no comment
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** No representation
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received - no comment
- 4.1.7 **The Safeguarding and Child Protection Unit:** No response received - no comment
- 4.1.8 **The Primary Care Trust:** No response received - no comment
- 4.1.9 No responses were received from any other Responsible Authority.

4.2 Any other persons: No representations were received from other parties during the 28 day consultation period which ended on the 14 July 2022.

4.3 No letters of support were received.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received mainly raise the following issues:

- The prevention of public nuisance

- 5.2** The Licensing Sub-Committee should consider those conditions offered in the applicants operating schedule (Appendix 2 Section 18) and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations.

6. Policy Considerations

- 6.1** Regard must be had to the Council's adopted Statement of Licensing Policy published March 2022 when determining this application.

With regard to Late night refreshment the policy states Experience has shown that it is sometimes difficult to comply with the terminal hour in respect to the provision of late night refreshment. Supply of hot food or drink actually takes place when it is handed to the customer, not when money is exchanged. Given that the premises may be full of customers at the terminal hour of the licence, it is advisable to ensure there is sufficient measures in place to ensure there is time to serve these customers. Closing procedures such as when the door will be locked, the displaying of the 'closed' sign and letting customers out are worth taking into consideration in preparing an operating schedule. Applicants may also like to consider the need to prominently display their opening times on the shop window. Where premises are likely to experience crime and disorder, the use of CCTV and door supervisors should be considered.

The Council's Licensing Policy states, "The Licensing Authority is keen to protect the amenity of residents and businesses in the vicinity of licensed premises" (paragraph 3.35) In considering all licence applications, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. In preparing applications, applicants are strongly encouraged to consider the measures set out below. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.

The policy goes on to provide guidance on areas which applicants are advised to consider such as: noise escape, customer arrival, smokers, customer departure, staff departure, customer parking, public transport, location, outside areas, deliveries and waste collections, litter, lighting, complaints procedure and street drinking.

- 6.2** Regard must also be had to the national Guidance issued by the HomeOffice under Section 182 of the Licensing Act 2003, as amended.

Of particular relevance are Section 9 which refers to determining applications. In paragraph 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises

user as the case may be.

- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.

Paragraphs 10.8 – 10.10 of the statutory guidance which relate to imposing conditions are also relevant and should be considered as part of determining this application. And paragraph 10.13 relating to hours of trading:

- 10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.
- 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.
- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned.

Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises.

Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes.

Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

In relation to public nuisance Para 2.16 states Public nuisance is given a statutory meaning in many pieces of legislation. It is however, not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.

Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

And para 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping.

In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

7. Links to Council Policy Objectives

7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. Panel Report

8. Resources, Risk and Other Implications

8.1 Resource: The only resource implications to date has been officertime. If the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee, however, this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council mayalso have to pay the applicant/other party’s costs.

8.2 Human Rights

The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents.

Any decision taken must be appropriate and proportionate to the objective being pursued. In particular the following should be takenonto consideration:

Article 6 - the right to a fair hearing

Article 8 - respect for private and family life

Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence)

8.3 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interferedwith.

8.4 Therefore if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large’s enjoymentof their property/possessions.

8.5 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee’s decisionwill be both proportionate and justified having had regard to the Human Rights Act 1998.

8.6 The Equality Act 2010, including the Council’s Public Sector EqualityDuty, must be taken into account when making decisions in relationto licensing applications.

9. Determination by the Licensing Sub-Committee

9.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Regard must also be had to the Council's Statement of Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

9.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.

9.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

9.4 The following options are available to the Licensing Sub Committee:

9.4.1 Grant the Premises Licence - subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.

On a "without prejudice" basis, a draft list of **proposed Conditions** is attached to this Report marked "The Schedule".

9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.

9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.

9.4.4 Reject the whole of the Application.

9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is considered

appropriate and proportionate to promote the four licensing objectives and in response to the representations received).

9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee's decision.

THE SCHEDULE

The Mandatory Conditions

Not applicable

Proposed conditions as amended

General Licensing Objectives

- We are a small company and to operate to meet the demands of our customers we remain conscious of our surroundings and predominately we do deliveries so there will be limited free flow of customers into the store.

The prevention of crime and disorder

- An incident log shall be kept at the premises, and made available on request to an authorised officer of Buckinghamshire Council or Thames Valley Police

Public safety

- We prioritise public safety and our daily workings are measured to ensure that we factor this in.

The prevention of public nuisance

- The licence holder shall have a system in place to regularly monitor the use of outside areas by customers to ensure nearby residents are not disturbed by customer noise and the area is kept clear of litter.

The protection of children from harm

- The licence holder shall ensure that signage in relation to spotting the signs of exploitation, are displayed on the premises.
- The licence holder shall report any concerns relating to suspicious behaviour, indicating that exploitation may be taking place on or around the premises, to Thames Valley Police.

Informative/s -

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Background Papers:	PR202206-272261 Licensing Act 2003, as amended Licensing policy Buckinghamshire Council Published March 2022 Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.