

<b>SUBJECT:</b>	<b>APPLICATION FOR A NEW PREMISES LICENCE at: McDonald's Restaurants, Wycombe Retail Park, Ryemead Way, High Wycombe, Buckinghamshire, HP11 1FY</b>
<b>REPORT OF:</b>	<b>Application under section 17, Licensing Act 2003</b>
<b>Responsible Officer</b>	<b>Kerryann Ashton – Licensing Officer</b>
<b>Report Author</b>	<b>Kerryann Ashton – Licensing Officer</b>
<b>Ward/s Affected</b>	<b>Tylers Green and Loudwater</b>

### 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 McDonald's Restaurants Limited of 11/59 High Road, East Finchley, London, N2 8AW ("the applicant") in respect of McDonald's Restaurant, Wycombe Retail Park, Ryemead Way, High Wycombe, Buckinghamshire, HP11 1FY ("the premises") by Elaine Rayner at Shoosmiths LLP ("the agent").

### 2. Background

2.1 The premises consists of a Unit in the Wycombe Retail Park with a ground floor indoor restaurant and outside seating area. The site is located off the London Road outside of Wycombe Town Centre.

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 **Appendix 3**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
<b>The provision of late night refreshment</b> Both indoors and outdoors	Monday to Saturday 23:00 – 00:00
<b>Hours premises are open to the public</b>	Monday to Saturday 07:00 – 00:00 Sunday 0800 - 2300

## 4. Relevant Representations

### 4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Have agreed conditions with the applicant - No objection, **Appendix 4.**
- 4.1.2 **The Licensing Authority:** No response received
- 4.1.3 **The Fire and Rescue Authority:** No objection, **Appendix 5**
- 4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No objection, **Appendix 6**
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** No response received
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received.
- 4.1.7 **The Safeguarding and Child Protection Unit:** No response received.
- 4.1.8 **The Primary Care Trust:** No response received.

4.2 **Any other persons:** 11 (eleven) valid objections were received during the 28 day consultation period on the grounds of the prevention of crime and disorder; public safety; prevention of public nuisance and protection of children from harm licensing objectives. Copies of the representations are attached as **Appendix 7.**

## 5. Licensing Officer's Observations:

5.1 The Relevant Representations received largely raise the following issues:

- The prevention of crime and disorder  
Representations mention concerns regarding anti-social behaviour, and crime increasing within the area as a result of the application being granted.
- Public Safety  
Representations mention concerns regarding the possible dangers caused by an increase in traffic and unsafe parking/driving by third party delivery drivers outside the premises.
- Prevention of a public nuisance  
Representations mention concerns regarding an increase in litter accumulating in the areas surrounding the premises. Residents have also expressed concerns in their representations regarding an increase in noise caused by customers congregating outside the premises or in the car park and an increase in late night traffic.
- The protection of children from harm  
Representations mention concerns regarding an increase in crime and antisocial behaviour making the surrounding area unsafe for children.

5.2 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties. These are set out in section 10 below.

## 6. Policy Considerations

6.1 Regard must be had to the Council's adopted Licensing Policy published February 2022 when determining this application. Part C Para 3.14 states the Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects this to be demonstrated through the operating schedule.

The Licensing Authority considers that conditions play a key part in the promotion of the licensing objectives. Before making applications, applicants are expected to risk assess their proposed operations with reference to the licensing objectives. Potential applicants are encouraged to discuss their proposals with the Licensing Authority and responsible authorities. This will help them to formulate proposed conditions which will meet the licensing objectives and avoid objections ("relevant representations"). Where they fail to do so and relevant representations are received, the Licensing Authority will have to consider whether additional conditions are appropriate to promote the licensing objectives. Breaches of conditions in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. (Para 3.18)

In preparing their applications, applicants are strongly encouraged to consider the terms of this Policy in general and this chapter in particular. In considering applications, the Licensing Authority will also take this Policy as a starting point. (Para 3.19)

Applicants' attention is drawn to the non-exhaustive pool of conditions published by the licensing service and available on the Council's website. These conditions may be of use to applicants when completing operating schedules. In accordance with case law, (Crawley BC v Attenborough [2006]), the licensing authority is entitled to go through any draft conditions which are being offered by the applicant or as part of the application process and to advise them of appropriate wording which will make the condition clear and enforceable and seek their agreement to amend their application to achieve this objective. The conditions listed are similar to those which the Licensing Authority has found particularly useful in promoting the licensing objectives when addressing concerns raised by responsible authorities and other parties. In appropriate circumstances, the Licensing Authority will draw upon these conditions when exercising its licensing powers. (Para 3.21)

Of particular relevance (but not limited to) the following:

### **Anti-Social behaviour**

Licensing is not the primary mechanism for controlling anti-social behaviour away from premises and beyond the direct control of operators. However, it is a key aspect of such control and licensing law is part of the holistic approach to the management of the evening and night time economy in town and city centres as well as rural areas and to some extent during the daytime too. Therefore, this Policy acknowledges the contribution of individual premises and, in certain circumstances, groups of premises to anti-social behaviour. (Para 2.36).

### **Prevention of a public nuisance**

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. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance. (Para 3.36)

(Para 3.37) Particular measures include:

**Noise escape.** The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices. In appropriate circumstances and where not included in the operating schedule, a condition may be imposed requiring the assessment by the applicant (either with or without the involvement of Environmental Health), of potential noise sources which could cause disturbance to those in the vicinity and to identify and implement appropriate control measures.

**Customer parking.** The arrangements made or proposed for parking by patrons and the effect of parking by patrons on local residents.

**Customer departure.** The steps taken or proposed to be taken by the applicant to prevent disturbance by customers leaving. Such steps will include proper winding down policies so that customers leave gradually and quietly, notices to customers requesting respect for neighbours, the use of dedicated taxis, management of queues for taxis, direction of customers away from residential areas, supervision of exterior areas, requesting customers to respect neighbours and prevention of customers gathering outside the premises.

**Deliveries and waste collections.** As far as possible delivery and collection times should be to minimise the risk of noise nuisance to residents and other businesses in the vicinity. Staff should avoid placing glass bottles and other waste outside late at night unless suitable noise Mitigation measures are in place.

**Litter.** Measures should be in place to manage the risk of littering associated with the premises. This includes having sufficient waste receptacles to avoid overflowing refuse containers and litter sweeps in the immediate vicinity to clear cigarette butts, food receptacles and flyers associated with the premises. Sometimes problems arise about litter from takeaways and, to a limited extent, from off licences. Licensees should consider distinctive wrapping, packaging or bags, so that litter can be traced back to particular premises and also periodic litter collection patrols and the provision of additional bins.

**Location.** Operators should thoroughly assess their location and be mindful of any premises particularly sensitive to nuisance such as nursing homes, hospitals, hospices or places of worship. In such cases the installation of additional special measures may assist in reducing the risk of nuisance.

**Outside areas.** The Licensing Authority supports the use of outside areas such as gardens and forecourts however robust management controls are usually required to ensure that the use of these areas does not cause a nuisance. Control measures may include adequate supervision, regular glass collections, curfews and last entry conditions.

**Complaints procedure.** All licensed premises are expected to have a complaints procedure in place. This may include a dedicated phone line available for local residents to use in the event of problems arising. Any complaint should be recorded in a log together with details of any action taken to the response. All staff should be made aware of the complaints procedure and provided with clear instructions. In some circumstances regular meetings with neighbouring residents can be beneficial in addressing any concerns. Experience shows that this is most effective if action is taken at early stage to build good relations with local residents.

## **Prevention of crime and disorder**

- 3.26 Section 17 of the Crime and Disorder Act 1998 places a legal duty on the Council to consider the reduction of crime and disorder, including the reduction of anti-social behaviour, in all its activities. The Licensing Authority will look to the police as the main source of advice on crime and disorder matters and will also seek to involve the local Community Safety Partnership for advice on anti-social behaviour.
- 3.27 Applicants are expected to demonstrate in their operating schedule how they intend to promote the crime prevention objective in relation to the licensable activities provided. Applicants should also consider local circumstances, for example such as the terminal hour of other licensed premises in close proximity, local crime and anti-social behaviour 'hot spots'.

## **Public Safety**

Applicants must be able to demonstrate that they have undertaken a thorough assessment of the risk to public safety presented by their intended activities. Statutory duties in relation to risk assessment arise from the Health and Safety at Work Act 1974 and the Regulatory Reform (Fire Safety) Order 2005. The Licensing Authority does not intend to impose conditions which simply replicate other statutory controls, but it will scrutinise whether all relevant measures are being applied so as to promote the licensing objectives. Applicants are encouraged, though not obliged, to submit with their applications evidence of compliance with such controls. (Para 3.33)

## **Protection from children from Harm**

Protecting children from harm is one of the core licensing objectives and protecting the vulnerable is a key priority of Buckinghamshire Council. Licensed premises can be a high-risk environment for children and young people. A child is defined as any person under 18 years of age and includes unborn children. Risks can include underage consumption of alcohol, access and exposure to tobacco products and illegal drugs, exposure to violence and disorder and exposure to inappropriate entertainment. Although not common there is also the potential for exposure to sexual exploitation, modern slavery, human trafficking and illegal employment. (Para 3.38)

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

In relation to the Prevention of crime and disorder the Statutory Guidance states:

Licensing authorities should look to the police as the main source of advice on crime and disorder. (Para 2.1)

Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. (Para 2.3)

In relation to public safety the Statutory Guidance states:

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. (Para 2.7)

In relation to the prevention of public nuisance the Statutory Guidance states:

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. (Para 2.21)

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. (Para 2.22)

As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. The approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate. (Para 2.24)

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night. (Para 2.27)

## **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. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

## **8. Resources, Risk and Other Implications**

8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals against the decision of the

Licensing Sub – Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.

- 8.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.
- 8.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. The persons making relevant representations have a right to respect for their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.
- 8.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.
- 8.5 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 interfered with.
- 8.6 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 enjoyment of their property/possessions.
- 8.7 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 decision will be both proportionate and justified having had regard to the Human Rights Act 1998.
- 8.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to 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 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.

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-Committees decision.

## 10. Conditions

**10.1 Proposed Conditions - re-drafted proposed licence conditions to ensure they are clear and enforceable from the ones originally proposed in the application.**



## **General Licensing Objectives**

This restaurant understands that in extending our opening hours we have a duty to the local community and that we continue to protect our staff and customers from danger and harm. We believe that the systems we have in place are robust, thorough and will, as far as reasonably practicable, secure the promotion of the four licensing objectives. It should be noted that no McDonald's restaurant within the United Kingdom serves alcohol and further none of our drinks or food are served to customers in glass receptacles.

We are eager to work in partnership with all responsible authorities to ensure the promotion of the four licensing objectives. We also seek to work with the local communities, whom we serve, in achieving a successful cohesion between our business operations and our neighbours.

### **The prevention of crime and disorder**

- The Premises licence Holder must ensure that they maintain a digital CCTV system with cameras located within the premises to cover all public areas including entrances and exits and the till area and will operate at all times the premises are open for licensable activities. The CCTV system will record clear images allowing the identification of individuals and the equipment will have accurate and constant date and time generation.
- All recorded footage must be securely retained for a minimum of 31 days. It will be capable of downloading recorded images onto removable media (DVD / USB or upload to a specific database directed by TVP) upon the request of an Officer of a Responsible Authority or Police Officer or in any case within 24 hours of that request at no expense to the requesting agency.
- There will be staff on duty at all times the premises are open to be able to allow an Officer of a Responsible Authority or Police Officer to immediately view any footage requested under the Data Protection Act (or other replacement legislation) and to provide those images as stated.
- The Premises will have an active Incident log in which will be recorded any incident connected to the licensing objectives. The record (which could be electronic) will be made available for inspection within 24 hours of a request of an officer of a Responsible Authority.
- A Staffsafe™ system with both audio and visual monitoring capability will be installed in the restaurant, this system, can be activated by either fixed or mobile panic buttons. Once activated the system links the restaurant to an external monitoring centre capable of intervening to resolve crime and disorder issues and/or provide the appropriate advice or instruction to support and protect the restaurant's staff and customers.
- At this restaurant all shift managers have safety and security training; including Maybo SIA accredited Conflict Management Training.

### **Public Safety**

- This restaurant is keen to work in partnership with the local Fire Service and Environmental Health Officer to ensure public safety. This restaurant has safety systems in place to protect the safety of customers and staff at all times (such as Staffsafe). We work with the local Environmental Health Office and local Fire Service to ensure we are complying, as far as reasonably practicable, with relevant Health and Safety and Fire Safety Legislation. This

restaurant is also subject to inspections from our own safety and security teams to ensure our systems are being maintained.

- All of our restaurant staff receive comprehensive safety training to ensure that safe working methods are adopted and all staff are trained on the restaurant's evacuation procedure in the event of a fire or other dangerous occurrence.
- This store operates a "No Open Alcohol Containers" policy to prevent persons carrying open alcohol into the in-store area.

#### **The prevention of public nuisance**

- The premises will have on display at all exits points notices requesting customers to leave the area quickly and quietly respecting the neighbour's rights.
- The premises will monitor the immediate car park and take reasonable steps to ensure customers are not causing anti-social behaviour and risk assess the employment of permanent Door Staff should this be an issue.
- McDonald's is committed to carry out litter patrols collecting both McDonald's packaging and any other litter that has been carelessly discarded. We are happy to act on recommendations from the Environmental Health Officer should they feel that we should extend our patrol to a nearby area, as far as this is reasonably practicable.
- All of McDonald's packaging displays the recycle symbol to encourage our customers to deal with their waste responsibly.
- Where it is practical to do so we are content to put measures in place to limit noise. All McDonald's restaurant doors are self-closing and we try to encourage our customers to be considerate to our neighbours and to limit noise both when ordering their food and on leaving the local area.

#### **The protection of children from harm**

- McDonald's do not anticipate that unaccompanied children will use the restaurant in the extended hour's period covered by this licensing application. We do however take their safety extremely seriously and will continue to employ the same practices to ensure that they are protected from harm at all times when visiting the restaurant.

#### **Informative/s -**

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Background Papers:	Application Ref PR202411-358685 Licensing Act 2003, as amended. Licensing Policy – As adopted March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.