

Report of Application:

Memlings, Unit 40, The Agora Centre, Church Street, Wolverton, MK12 5LG

Application Reference No: 143084

1. Summary of Application

1.1 This is an application for a new premises licence by Memlings Metro Ltd. The application is detailed in **Annex A**. In summary it will permit:

(a) Supply of Alcohol (on sales)

Sunday to Thursday 10:00 to 00:00

Friday to Saturday 10:00 to 01:40

Sunday before a Bank Holiday Monday to 01:40; Christmas Eve and New Year's Eve to 02:45

(b) Recorded Music (indoors)

Sunday to Thursday 10:00 to 00:00

Friday to Saturday 10:00 to 01:45

Sunday before a Bank Holiday Monday to 01:45; Christmas Eve and New Year's Eve to 03:00

(c) Late Night Refreshment (indoors)

Sunday to Thursday 23:00 to 00:00

Friday to Saturday 23:00 to 01:45

Sunday before a Bank Holiday Monday to 01:45; Christmas Eve and New Year's Eve to 03:00

(d) Opening Hours of the Premises

Sunday to Thursday 10:00 to 00:00

Friday to Saturday 10:00 to 01:45

Sunday before a Bank Holiday Monday 01:45; Christmas Eve and New Year's Eve to 03:00

1.2 This is a new licence, but it is worth noting a previous licence at the premises was revoked by Sub-Committee in April 2016. The decision was subsequently appealed, then the appeal withdrawn in November 2016 in conjunction with the license lapsing due to insolvency.

(a) Supply of Alcohol; Recorded Music

Sunday to Thursday 10:00 to 00.00

Friday to Saturday 10:00 to 01:45 the next day

Except on

Bank Holiday Mondays 10:00 to 02:00 the next day

New Years Eve 10:00 until 05:00 New Years Day

(b) Live Music

Monday to Sunday 10:00 to 00:00

(c) Late Night Refreshment

Sunday to Thursday 23:00 to 00.00

Friday to Saturday 23:00 to 02:00 the next day

Except on

Bank Holiday Mondays 23:00 to 02:00 the next day

New Years Eve 23:00 until 05:00 New Years Day

(d) Opening Hours

Sunday to Thursday 10:00 to 00.00

Friday and Saturday 10:00 to 02:00 the next day

Except on

Bank Holiday Mondays 10:00 to 02:00 the next day

New Years Eve 10:00 until 05:00 New Years Day

2. Background Information

2.1 The premises licence applicant, Memlings Metro Ltd was formed in January 2017 under the directorship Marcel Mavioka. There have been a number of meetings between the responsible authorities and Memlings Metro Ltd to try and resolve concerns over the new application and the management of the premises. Though this is a new licence application it is worth noting that the previous licence held at this premises was revoked and the licence holder

subjected to enforcement action. It could be argued that the background information that follows may not be relevant, due to this being a new licence application from a new applicant, however there are direct links and relevant information that the Sub-Committee will need to attach due weight as it sees fit.

- 2.2 The previous licence held by Memling Restaurant Ltd is very similar to the new application, though the hours are reduced slightly.
- 2.3 The Memlings Restaurant Ltd licence was revoked following a series of breaches of conditions and opening/licensable activities hours and general inability to promote the licensing objectives throughout the period of its operation in 2015-2016. Following a decision to revoke the licence, the applicant appealed and continued to operate, as permitted under the Act. It is likely offences were witnessed at times during the appeal period. The appeal was eventually withdrawn by Memlings Restaurant Ltd, and the licence ceased to be. At the time the company was undergoing liquidation and there was some debate to be had in court in respect of whether the business should have been in operation. Ultimately this matter was not subject to a Court ruling because the appeal was withdrawn. The review of the Memlings Restaurant Ltd is detailed in the representation and additional information supplied by the Licensing Authority in **Annex C**.
- 2.4 Though the applicant is a new applicant and may be able to show some clear separation from the previous licence holder, it is evident that there are significant associations that should be explored by the Sub-Committee.
- 2.5 The former premises licence holder at this site, Memlings Restaurants Ltd was dissolved in September 2016 and the directors were Gaby and Peter Lama. Gaby Lama has been present at the meetings between responsible authorities and the applicant. He has also responded to correspondence and describes himself as providing help and support to the new applicant.
- 2.6 The Designated Premises Supervisor, Sasa Lama, was the previous DPS under the licence held by Memlings Restaurants Ltd. Thames Valley Police have objected to the inclusion of Sasa Lama as the DPS as part of their representation to the present application. The applicant has advised they will supply an alternative DPS.
- 2.7 It is fair to say that the responsible authorities have raised concerns with the association to Gaby Lama and Memlings Restaurants Ltd and the previous problems associated with the premises that led to a licence revocation.
- 2.8 The representations made by the responsible authorities are an effort to ensure far tighter and well defined conditions are attached to the licence, if granted, to ensure better promotion of the licensing objectives.
- 2.9 The premises has been operating since approximately January 2017 as a restaurant, but not providing licensable activities.
- 2.10 This year, the premises has also been using Temporary Event Notices, covering eight weekends since January 2017 where they have been providing

licensable activities, generally until 2am. No complaints have been recorded against these TENs. Some of these TEN's events were visited by officers.

- 2.11 The premises describes itself as a restaurant/ bar. It will generally provide food until past midnight in the manner of a restaurant and host a DJ on the weekends. There is no dedicated parking for the premises, though generally customers would make use of the car park near the St George the Martyr church and to the Church Street side of the Agora Centre. Parking is available on The Square at the rear of the Agora, though this is limited.
- 2.12 The premises is wholly based on the first floor of the Agora. There is a two door lobby system, with customers ascending stairs from the alley way separating Church Street from Buckingham Street. This can lead to some potential problems as the noise from customers both leaving, talking and smoking can echo loudly in the area, which has little background noise at night time.

3. **Promotion of Licensing Objectives**

- 3.1 The applicant has made some effort at providing an operating schedule to address some of the potential problems they may be associated to a late night music venue. It would usually be expected that the applicant would have discussed in greater detail with the responsible authorities, prior to application, what sort of operating schedule would make an application more likely to succeed. In the event, the responsible authorities have submitted extensive representations to help control the licence if it is granted.
- 3.2 It should be noted that the premises has not received relevant complaints during the past few months, though there has been a smoke related issue relating to use of the cooker. A local resident has however included in their representation that noise problems persist.
- 3.3 Though the applicant has made some efforts to promote the objectives, it is fair to say officers are not confident the proposed operating schedule will suffice to enable the applicant to adequately promote the licensing objectives.

4. **Responsible Authorities**

- 4.1 Representations were received from Trading Standards, Environmental Health, Thames Valley Police and also the Licensing Authorities.
- 4.2 Trading Standards have requested conditions to be attached, which were agreed. These are detailed at **Annex B**.
- 4.3 Licensing Authority have submitted a representation and also additional information at **Annex C**.
- 4.4 Environmental Health have submitted a representation at **Annex D**.
- 4.5 Thames Valley Police have submitted a representation and also objected to the proposed DPS. The applicant has verbally agreed to remove the proposed DPS. They are yet to provide an alternative person at the stage of writing this report (see **Annex E**).

4.6 There have been some efforts to resolve the concerns of the authorities. Meetings have been held, and verbal agreement has been provided in respect of some of the conditions referenced. The applicant has considered amending some of the licensable activity times slightly and also agreed to some of the proposed conditions. Further clarity is being sought and it will be necessary at the committee to determine exactly how the application has been amended and what conditions are agreed.

5. **Other Persons**

5.1 The Licensing Authority received a representation form the Wolverton and Greenleys Town Council at **Annex F**.

5.2 A local resident has also provided a representation at **Annex G**. He also provided additional information. He lives directly beside the premises.

6. **Policy Considerations**

Relevant sections of the Guidance issued under Section 182 of the Licensing Act 2003. (April 2017)

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone Involved in licensing work.

They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

2.15 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.

2.16 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.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons

are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.18 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. But as stated earlier in this Guidance, 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
- 2.21 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.
- 8.44 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.
- 8.45 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

- 8.46 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.
- 9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.
- 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. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination
- 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.

Licensing Authorities Statement of Licensing Policy 2013 - 2018

3.2 The following will also be relevant:-

Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria.

The council's legal officer will ensure that the rules of 'natural justice' will be applied at all times during hearings or reviews.

The right of any individual or body to apply for a variety of permissions is not undermined.

The statutory right of any responsible authority or other person to make appropriate representations to an application or to seek a review in respect of a granted authorisation where appropriate is accepted.

The impact of the activities taking or proposed to take place at a licensed premises or businesses or individuals who are likely to be affected by it.

There is no presumption of grant under the Licensing Act.

5.3.3 The licensing authority is likely to impose stricter conditions regarding noise control for those premises that are situated close to residential areas if relevant representations are received. In these situations the licensing authority will expect the applicant to have scoped the potential for public nuisance including noise and/or vibration nuisance, and to have factored in suitable control measures within their operating schedule.

5.3.9 All persons including businesses, groups and individuals who are likely to be affected by any application have equal rights to make observations both for or against an application for a premises licence / club premises certificate, as do members of the licensing authority and other organisations that fulfil the definition. However, the licensing authority will disregard irrelevant, frivolous and vexatious representations.

10.2 When considering contested applications the licensing sub-committee must have regard to the licensing objectives this could include reference to the following information:

The occupancy figure for the proposed premises

Whether the proposed premises will act as a replacement for others in the area that no longer have a licence

The proposed methods of management outlined in the applicants operating schedule

The proposed hours of operation

The proposed licensable activities

The impact on the emergency services

The views of police, including crime and disorder statistics along with the seriousness and nature of previous incidents occurring at similar premises in the locality

Compliance history of the applicant.

17.1.6 Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate.

17.5.1 The licensing authority wishes to protect the amenity of residents and businesses in the vicinity of licensed premises and for these purposes 'in the vicinity' is taken to mean the immediate area around licensed premises without any stated distance criteria. Matters of concern will be dealt with on an individual basis

17.5.4 The licensing authority will also consider representations made by relevant persons or responsible authorities on the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. These could include the steps taken or proposed to be taken by the applicant regarding the following issues:-

Excessive noise and vibration escaping from the premises, including music, noise from mechanical ventilation equipment and human voices.

Disturbance by customers, staff, delivery vehicles or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7a.m.

Queuing either by pedestrian or vehicular traffic on land under the applicant's control.

Arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents

Use of gardens and other open-air areas within the curtilage of the premises.

Siting of external lighting.

Increase in refuse storage or additional littering in the vicinity of the premises.

Previous history of nuisance complaints.

Potential for odour nuisance.

Confidence in the management to deliver the control measures proposed.

7. **Officers Observations**

- 7.1 The premises is located in a commercial area, but adjacent to residential properties. The premises history and the association with the previous premises manager would appear to directly undermine this application. There is no doubt that the application is for a new business owned by a new person. However the applicant clearly has significant links to Mr Lama and would agree that he is taking advice from him. Though Mr Lama clearly has experience in the business, this may not necessarily strengthen the case that the licensing objectives will be promoted.
- 7.2 The suggested conditions offered by the responsible authorities will undoubtedly help the applicant to control the premises and promote the objectives. However this will only be the case if the applicant complies with them.
- 7.3 There does not appear to be any particular reason why the premises cannot be managed in a way that promotes the objectives and limits its impact on the surrounding residents. Though the main entrance is situated in a position that brings it level with a local residents first floor windows, physically, the building has no windows to allow noise breakout. The lobby can be controlled, i.e. keep one door closed when one open, but only if the management ensures that it is.
- 7.4 The Sub-Committee will need to be confident that the premises management will fully implement any conditions imposed.
- 7.5 Plan of the locality is at **Annex H**.

8. **Associated Papers**

None.

Contact Officer For further information on this application please contact James Sloan on telephone 01908 252801 or e-mail: james.sloan@milton-keynes.gov.uk