

STATEMENT OF WITNESS

(C.J. Act 1967 ss 2 & 9 - M.C. Act 1980 s 102)

(And M.C. Rules 1981 rule 70)

STATEMENT OF: Edward Fisher

OCCUPATION: Senior Practitioner (Licensing_
Milton Keynes Council
Civic Offices, 1 Saxon Gate East
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AGE: over 18

In March 2016 I submitted a review application to the Council as a responsible authority under the Licensing Act 2003 in respect of premises known as Memling's with a licence holder of Memling's Restaurant Limited.

The review was submitted due to the cumulative impact of repeated non-compliance by the licence holder; the complaints received; and the inadequacy of some of the licence conditions. Issues included noise problems; trading beyond licensed hours and failure to act on matters brought to the attention of the licence holder. As the review applicant I collated information from Council records to demonstrate a history of issues and these were evidenced as part of the Review.

The evidence in this statement is provided to demonstrate that the management at the venue had not been of a sufficient standard to promote the licensing objectives and suitable controls were not in place to minimise public nuisance between 2014 and 2016 when I was involved directly with trying to obtain compliance. Whilst I accept that the current application is from a different company I provide examples of why standards were not adequate to demonstrate why the location of this premises is sensitive and what happens when management standards are not of an adequate standard.

1. I visited the premises on August 31st 2014 and witnessed large numbers of people leaving the premises after the formal closing time because the management had been unable to control the clientele. Similarly I visited again on 27th December 2014. At that time the closing time was again breached.
2. I visited again on the night of 30th May 2015 at 01:50hrs and noted potential disturbance from people leaving and chatting on the external

stairs.

3. I visited again on June 27th 2015 at 00:15hrs and noted music was audible outside and their appeared to be dancing going on. At the time the licence in place required entertainment cease by midnight.
4. In January 2016 I received a complaint via the MP from a resident in the nearby Buckingham Street detailing a catalogue of issues including trading beyond licensed hours over the Christmas period. This resulted in a warning letter sent by me to the premises on January 26th 2016. I also undertook a licence inspection against the premises licence in place and identified non-compliance in a number of areas. I also visited on January 9th 2016 at 01:30 in the morning and spoke to Mr Lama at which time he told me he thought his noise limiter might have been circumvented by the DJ
5. On February 28th 2016 I visited the premises as part of an out of hour's role for the Council and could clearly hear music from the premises known as Memling's at 01:55 in the morning. .
6. On April 12th 2016 I provided additional information in support of the review application I had lodged demonstrating noise issues witnessed by colleagues in the Council and other matters.

As additional papers to the review hearing I also produced financial details applicable to Mr Lama as Director of Memling's Restaurant Limited. In summary Mr Lama had entered into an Individual Voluntary Arrangement (IVA) with creditors to avoid bankruptcy. As part of his IVA he stated Memling's Restaurant Limited was not in use as a company, yet at the same time he was undertaking licensable activities under the company name. He was therefore either committing offences under the Licensing Act 2003 for a period of time or deceiving creditors in terms of his IVA.

The decision of the committee In May 2016 was to uphold the review application and a decision was made to revoke the premises licence and the decision notice I exhibit as EF1. An appeal was then lodged and the premise continued to legitimately trade until the Appeal was heard by the Magistrates Court.

During the appeal period I continued to monitor the premises. On the 16th July 2016 at 23:20 I could hear bass music on arrival outside the premises whilst parked on Buckingham Street at the back of Memling's. There were some competing noise sources but Memling's was open and a bass beat was audible and I could hear bass through closed windows of my vehicle.

On August 26th 2016 I undertook an inspection of Memling's Restaurant with

the Police Licensing Officer. The purpose of the inspection was to check the premises were compliant with the authorisation in place for sale of alcohol; entertainment and late night refreshment under the Licensing Act 2003.

During the inspection I asked Mr Gaby Lama (a director of Memling's Restaurant limited) if there were any issues with the company as the holder of the premises licence. I asked this because I know from experience that Mr Lama has been in financial difficulties himself. At the time he said there were no issues and I confirmed I would be checking.

During the early hours of August 28th 2016 I attended the premises between 0:15 and 02:15 hours to ensure it was closed in line with the requirements on the premises licence in place. At the time of my visit patrons had not left the venue by the closing time of 2am specified on the licence and some customers were waiting for hot food even though the latest time for late night refreshment is 2am. People were then loitering outside until at least 02:20 when I left site to visit elsewhere.

As a result of the inspection and my visit I delivered a letter to the premises on September 7th 2016 reminding them that the licence would lapse if the Memling's Restaurant Limited (the licence holder) became insolvent and identifying the breach of closing hours on the morning of August 28th. This followed on from communication from Companies House on the same day confirming that the licence holder was to be dissolved as a company on September 13th.2016.

On the 19th September 2016 I confirmed with Companies' House that the licence holder had been dissolved and hand delivered a letter to Memling's confirming that the licence had lapsed under Section 27 of the licensing Act and to continue trading may mean offences were committed. On the 28th September 2016 I had delivered a letter requesting the supply of CCTV images for two dates when the premises appeared to be open beyond licensed hours.

This followed a visit I made to the premises during the early hours September 25th 2016 when I again witnessed patrons from Memling's departing the premises beyond the closing time of 02:00hrs. On this occasion at 02:24 I saw 13 people leaving and when I looked inside the venue there were further individuals seated and 'disco' lights were still flashing suggesting that the premises had still not closed. The police licensing officer later confirmed that Police officers had visited the premises on the same night and been told the premises would be undertaking licensable activities.

On October 17th 2016 Companies house confirmed that the licence holder was still dissolved meaning the licence remained lapsed. No application was made to transfer the lapsed licence within 28 days from the time the licence

holder was dissolved as allowed for under the Licensing Act 2003 meaning that there was no authorisation in place that permitted the sale of alcohol; the provision of entertainment or the supply of late night refreshment at the premises.

On October 17th 2016 I received a phone call from the Police Licensing Officer confirming that Police had been called to the area on the morning of 9th October to investigate a resident complaint of arguing outside of the Memling's at 02:30hrs – beyond the closing time of the premises.

Visits to the premises by the councils out of hour's officer on October 1st and 23rd 2016 confirmed the premises were still open and trading.

On November 13th 2016 I visited Memling's at 01:28hrs as part of out of hours working arrangements for the Council. I parked on Buckingham Street to the rear of the premises and saw a man talking on his phone at the top of the alleyway next to 22 Buckingham Street. Whilst parked in my vehicle I could hear some sort of extract fan and some music in the background with the windows wound down. At 01:33hrs I saw the man walk down the alleyway towards Memling's and later saw him on the entrance stairs to Memling's so believe he was a patron of the premises. I left my vehicle and walked around the entire perimeter of the Agora centre of which Memling's forms part. I identified that the music noise I could hear was probably from a car in the car park to the front of the Agora. The car was parked with its windows open and people were standing outside of it talking and listening to the music. I would imagine this could be disturbing to residents as I had heard the music some distance away myself. At approximately 01:40hrs the car stereo was turned off and I saw the people concerned walk into Memling's. I therefore considered them patrons of the venue.

At about this time I spoke to Mr Gaby Lama as proprietor of Memling's on the entrance stairs to the premises. He confirmed to me that he was trading as usual and had been selling alcohol and providing entertainment but that he was just about to close (in line with the licence that was previously held). The premises continue to provide licensable activities with no authorisation in place despite a warning that offences could be committed.

Whilst I was waiting to speak to Mr Lama I was stood on the external staircase that leads to the venue entrance and there were people congregated on the top of the stairs trying to get inside. I didn't notice any misbehaviour as such but it is very quiet in this area at this time of the morning and the top of the staircase is roughly in line with the first floor rear bedrooms of residential properties in Buckingham Street so I believe there is potential for noise disturbance. Even though the premises was about to close I saw five people go into the premises whilst I was there.

I then relocated my vehicle to Church Street in Wolverton so I could see the dispersal of patrons at closing time. I parked outside Eastern Express at 02:00hrs.

The car park that serves Memling's was full and there was a general exodus of people leaving the venue which was good natured. People were getting into cars, and taxis were arriving. There were some loud voices and some tooting of horns. Some people took a while to disperse as they remained chatting in the car park. The use of the car park seemed entirely related to Memling's. I could also hear car stereos as people departed. Although the premises licence that was in place required the premises to close by 02:00hrs people were still leaving at 02:15hrs. I would consider the dispersal noise to be potentially disturbing because there is not much background noise in this area in the early hours of the morning.

In the week before the appeal hearing due to be held in December 2016 the appeal was conceded and the revocation imposed in May by the Licensing sub committee of the Council finally came into effect. The premises then used the Temporary Event Notice process to undertake licensable activities mainly on weekends during November; December; January and February. The legal limits on these were reached in March 2017 and on the 24th I attended the premises to ensure alcohol was not being supplied. There was no evidence at this time that offences were being committed.

The evidence in this statement up to this point is provided to demonstrate that the management at the venue had not been of a sufficient standard to promote the licensing objectives and suitable controls were not in place to minimise public nuisance.

In January 2017 an application was made to transfer the revoked premises licence but this was rejected (because there was no licence to transfer)

In February 2017 a premises application was lodged but subsequently rejected for failing to advertise in compliance with the legislation

In March a further application was lodged that has now proceeded to hearing. This is by a different company than the previous licence holder, the sole director of which is a relative of the previous management.

If the Committee are minded to grant the application as a Responsible Authority I argue that there needs to be tighter controls in place at the venue than before and a list of potential conditions has been provided to the applicant aimed at achieving this. These have been verbally agreed by the applicant but the previous management will remain involved at the premises so there needs to be confidence that any licence granted really will be complied with. The conditions proposed and the application itself would

mean a slightly earlier finish time than has previously been allowed together with longer drinking up time to ensure closing times are more likely to be achieved. These conditions are in my representation submitted previously

E Fisher

April 24th 2017