

Licensing Sub-Committee report



10 January 2022

Report of: James Sloan (Licensing Officer)
 Application: Review application
 Premises: Food 4 Less (Transilvania)
 Applicant: Licensing Authority
 Date of Application: 18 November 2021
 Application Ref: 160751

Exempt / confidential / not
for publication

No

1. Application

- 1.1 This is a review application served by the Licensing Authority, as a Responsible Authority, to consider the premises licence at the Food 4 Less premises known as Transilvania [sic]. The application has been made on the grounds of all four of the licensing objectives. The application can be found at **Annex A**.
- 1.2 The current premises licence can be found at **Annex B**. It permits the off sale of alcohol only:
- Monday to Sunday 09:00 to 22:00**
- 1.3 Members will note that that, at the time of writing the report, the premises licence holder is not the same one that was listed on the review application papers. This is because a transfer application was received on 10 December 2021 and deemed granted from this date subject to any objections from the Police or Home Office.
- 1.4 When the Licensing Authority, acting as a Responsible Authority, makes a review application, it is important that there is a clear split between the Responsible Authority roles and administrative roles. Separate officers have taken on administrative versus Responsible Authority duties in this application.
- 1.5 A review application is an enforcement tool used when other methods to bring an operator into compliance have not been effective, the Section 182 Guidance states: *“Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to*

give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review.”

The Licensing Authority, acting as the administering body, has accepted this as a valid review application, noting opportunity to resolve concerns was not taken up and a review application appeared to be the only solution to rectify non-compliance.

2. Responsible Authorities

2.1. The Licensing Authority, as the Responsible Authority, have served this review under all four of the licensing objectives for the following reasons:

- (a) the holder of premises licence is (was) no longer connected to the premises;
- (b) the Designated Premises Supervisor specified on the licence is no longer connected to the premises;
- (c) the staff on site do not understand the controls and steps they should take in terms of the responsible retail supply of alcohol;
- (d) there appears no one is willing to take responsibility for the premises; and
- (e) breach of conditions.

2.2. Licensing Officers have been working with the premises management for some time and offered ample opportunity to resolve the matters above. The review application offers a potted history, to summarise, the licence was suspended for failing to pay the annual fee in September 2021, this was paid, but concerns were raised during an inspection on 12 October in respect of ownership and compliance with conditions. Follow up inspections took place on 20 October 2021 and 10 November 2021. Concerns were not resolved leading to a review submitted 18 November 2021. Further visit on 10 December 2021 showed some improvements, but not sufficient to satisfy the review applicant. Additional information supporting the review has been provided at **Annex C**. At the time of writing this report, a transfer application has been accepted.

2.3. Thames Valley Police have submitted a representation at **Annex D**. The Police Licensing Officer shares similar concerns in respect of the operation of the premises and ability of the management and staff to implement the conditions and sell alcohol responsibly.

3. Other Persons

- 3.1 No other representations have been received in respect of this application. Neither the previous licence holder, nor current holder has made representation against this review application, though they are permitted a right of reply during the hearing. The licence holder has been offered the chance to make representation and may provide additional papers prior to the hearing.

4. Officer Observations

- 4.1 The application has been served correctly by the Licensing Authority.
- 4.2 The premises is located on Queensway, at the opposite end to the band stand. It is a busy high street with a range of businesses and a high level of foot traffic. There are many other similarly licensed premises in the vicinity and several on licensed restaurants, a pub, two members clubs and a night club/bar. A map of the locality is available at **Annex E**.
- 4.3 The premises has held a premises licence for many years, with the current licence originally granted in 2016. There has not been any public nor responsible authority complaints made against this premises.
- 4.4 In 2018 similar concerns were identified in a routine inspection. The licence holder and DPS did not appear to be in control of the premises and staff appeared insufficiently trained. Resolution of these concerns were protracted in a similar fashion and this has contributed to this review application being submitted, however transfers were made, and staff put on personal licence qualification courses at the time.
- 4.5 A failure to pay the annual fee in September 2021 led officers to again inspect. The inspection uncovered concerns about the controls on alcohol sales and who was responsible for the licence and sale of alcohol. Neither the Premises Licence Holder nor Designated Premises Supervisor appeared to have anything to do with the premises but would not relinquish their positions on the licence. Consequently, there was a very real concern as to how alcohol sales were being managed.
- 4.6 Four inspections to meet staff and the owner Daniel Rusu have not provided confidence that the staff were able to comply with the licence conditions effectively. Several staff members were met during visits, some of them held personal licence qualifications, however none of them were able to effectively demonstrate they understood any of the conditions nor whether they could sell alcohol responsibly. There was undoubtedly a difficulty in communication, however there appeared to be a complete lack of ability for staff to communicate even with the owner, Mr Rusu, providing translation.

4.7 The Licensing Authority has recently accepted an application to transfer the licence to Mars Continental Limited, who should now be considered the licence holder. Mr Rusu and the current DPS are listed as directors. An agent now engaged by the licence holder provided some information at **Annex F**.

5. Determination of the Application by the Sub-Committee

5.1 A review hearing must be held, even if matters are resolved prior to the hearing.

5.2 Having had regard to the application and any representations made, the Sub-Committee can, in order to promote the licensing objectives, take the following steps:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months; or
- (e) to revoke the licence.

5.2 Though there is a legislative requirement to hold a review hearing once a review application has been served, the premises licence holder is permitted to describe the actions they have taken to resolve the concerns made in the application.

5.3 The four Licensing Objectives are:

- (a) The Prevention of Crime and Disorder.
- (b) Public Safety.
- (c) The Prevention of Public Nuisance.
- (d) The Protection of Children from Harm.

5.6 When carrying out its functions under the Act, and determining an application, the Licensing Authority must have regard to the Guidance issued by the Home Secretary under section 182 of the Act and its own Statement of Licensing Policy.

5.7 Extracts from the Guidance appropriate to this application are attached at **Annex G** to the report. A full copy is available online or from the Licensing Team.

5.8 Extracts from the Council's Statement of Licensing Policy relevant to this application are attached at **Annex H** to the report. A full copy is available online or from the Licensing Team.

Contact Officer

For further information on this application please contact James Sloan on telephone 07557 607 929 or e-mail: james.sloan@milton-keynes.gov.uk

List of Background Papers

Milton Keynes Council Statement of Licensing Policy 2018-2023.

<https://www.milton-keynes.gov.uk/environmental-health-and-trading-standards/licensing/alcohol-and-entertainment/milton-keynes-council-licensing-policy>

Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 - April 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf