

Licensing Sub-Committee report



milton keynes council

DETERMINATION OF AN APPLICATION FOR A NEW PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003:

ROMANELLI'S PIZZA, "REAR OF RONI'S CAR WASH, 159 WATLING STREET, ELFIELD PARK, MILTON KEYNES, MK5 8AA

Application Reference **157165**

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Exempt / confidential / not for publication	No
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1. Purpose

- 1.1 As the relevant local Licensing Authority for the purposes of the Licensing Act 2003 ("the Act") Milton Keynes Council ("The Council") is required to determine a new premises licence application submitted by Romanelli's Italian Food Limited under section 17 of the Act. The application is attached at **Annex A**.
- 1.2 The application has undergone the prescribed statutory consultation process of being given to the specified responsible authorities, advertised by the positioning of a blue notice on/near to the premises and advertised in the local newspaper. In addition to the statutory process the licensing team additionally notified the relevant parish council, ward councillors and any business or residential properties within 50 metres of the proposed site.
- 1.3 The Council has had its discretion engaged following the receipt of a relevant representation from a Ward Councillor attached at **Annex B**.

2. Actions and Options

- 2.1 Section 4 of the Act requires the Council, as the Licensing Authority for its area, to carry out its functions with a view to promoting the four licensing objectives.

These objectives are:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

2.2 Each objective is of equal importance and the Sub-Committee cannot, when making its determination, consider any issue that is not related to either of the above objectives.

2.3 Under section 17 of the Act the Sub-Committee has available to it, the following options:

- (a) to grant the licence as applied for subject to:
 - (i) the mandatory conditions required to be imposed under the Act;¹ and
 - (ii) the conditions consistent with the applicants operating schedule as may be modified as the sub-committee consider appropriate for the promotion of the licensing objectives.²
- (b) to exclude from the licence any of the licensable activities applied for or to amend the times in which they occur; or
- (c) reject the application in its entirety.

3. Issues

3.1 The applicant trades from a purpose-built self-contained catering unit (“The premises”) located off of the V4 and as shown on the map provided at **Annex C**. The premises are set back from the main road but is visible from the highway. The premises are within the Loughton and Shenley ward.

3.2 The applicant has applied for a licence in order to sell alcohol and late night refreshment. The times proposed are Sunday to Thursday 11:00 - 02:00 and Friday to Saturday 11:00 - 05:00.

3.3 The applicant has been trading from the area for the purposes of providing food and non-alcoholic beverages for some time (closing prior to 23:00). Due to the operation of the Council’s street trading policy the applicant is

¹ These are stated at Section 19 and 19A of the Licensing Act 2003.

² Modification means the addition of new conditions or the removal or amendment of existing conditions.

prohibited from selling direct to the public and can only take orders in advance - either for collection or delivery.

- 3.4 There are no complaints recorded on the Council's system about the operation of the business in its current location.
- 3.5 Prior to submitting the application, the applicant sought advice from the Licensing team about the measures that would likely be necessary to promote the licensing objectives. Conditions were therefore proposed by the applicant and attached with their application.
- 3.6 The scanned copy of the application attached at **Annex A** is of poor quality. A full list of conditions proposed to be added to the licence (if granted) as consistent with the applicants operating schedule is attached at **Annex D**.
- 3.7 Councillor Nolan of Loughton and Shenley Ward submitted a representation to the Council outlining the following concerns:
 - people may purchase alcohol and consume it in neighbouring public areas and leave rubbish and litter;
 - people drinking alcohol in the parks will spoil other people's enjoyment of the parks;
 - existing litter problems in the area may be added to and endanger wildlife;
 - existing graffiti, anti-social behaviour and gangs; and
 - impact on recently licensed outdoor cinema at Elfield Park.

4. Consideration and Determination of this Application

- 4.1. The Act requires the Licensing Authority to take such steps as it considers appropriate for the promotion of the Licensing Objectives, having regard to the representation made, the Council's statement of licensing Policy (extracts attached at **Annex E**) and the Home secretary's guidance ("the guidance") issued under section 182 of the Act (extracts attached at **Annex F**).
- 4.2. The applicant seeks to be authorised to sell alcohol and late-night refreshment for consumption off the premises. Part of the representation raised relates to the concern that customers collecting food and alcohol from the premises may consume it in near-by public areas with associated litter and anti-social behaviour problems.
- 4.3. The guidance (at paragraph 2.21) states that a licence holder should not be held responsible for the issues caused "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.”

- 4.4. The guidance suggests that decisions should be evidence based (paragraph 9.43). The Sub-Committee should therefore identify if there is any evidence of existing problems related to the undermining licensing objectives and if there is, is it appropriate to refuse an application rather than deal with any current problem. Alcohol consumption in public areas that results in problems, for instance, can be controlled by measures such as Public Spaces Protection Order (PSPO).
- 4.5. It would not normally be considered appropriate to prevent an applicant from selling alcohol for consumption off the premises simply on the concern that individuals may purchase from that business and misbehave away from those premises. The Act provides the power of review should problems occur. The committee should be minded to refuse or modify the application if it considers that the granting of the application will add to the existing issues complained of or cause them.
- 4.6. As the business is located near to a vast public outdoor area, the Sub-Committee may be required to consider the likelihood of customers purchasing alcohol from the applicant to consume outside and whether the proximity of a premises selling alcohol in the area makes it more likely that members of the public will do this.
- 4.7. If the Sub-Committee does identify that the application, if granted in its current form, would undermine the licensing objectives, the Sub-Committee should then consider if the concern could be resolved by the imposition of conditions or the amendment of hours or activities.
- 4.8. This requires, “an assessment of what action or step would be suitable³” to prevent the occurrence of the activity found to undermine the licensing objective(s). Conditions should only be imposed if they are considered “appropriate” for the licensing objectives and requires the authority to consider “the potential burden that the condition would impose on the premises licence holder as well as the potential benefit in terms of the promotion of the licensing objectives.⁴”
- 4.9. The application as it currently stands requires alcohol to be ordered in advance online and collection between 23:00 and 11:00 each day will not be permitted.

³ Para 9.44 of the Guidance.

⁴ Para 9.44 of the Guidance.

- 4.10. If no further condition or amendment could be made that would reduce any harm identified by the Sub-Committee, the Sub-Committee may then consider whether refusal of the application is appropriate.

5. Implications

5.1 Policy

Section 4 of the Act requires the Licensing Authority, when carrying out its licensing functions, to have regard to its statement of licensing Policy. A link to the full Policy is at the end of this report. Extracts which may be of relevance to the determination of this application can be found at **Annex D**.

5.2 Statutory Guidance

Section 4 of the Act requires the Licensing Authority, when carrying out its licensing functions, to have regard to the Guidance issued by the Home Secretary under Section 182 of the Act. A link to the full Guidance is at the end of this report but extracts which may be of relevance to the determination of this application can be found at **Annex E**.

5.3 Legal

The Licensing Sub-Committee is required to determine each application on its own merits having regard to the licensing objectives; the guidance issued under Section 182 of the Act and the Council's statement of licensing policy. Where it is appropriate for the Sub-Committee to depart from its Policy or the Guidance clear reasons must be given for doing so.

The decision that the Sub-Committee can make is restricted to the options set out in Section 18 of the Act (see paragraph 2 above).

List of Annexes

Annex A	Application
Annex B	Representation
Annex C	Site location map
Annex D	Conditions consistent with operating schedule
Annex E	Extracts of Council's statement of licensing policy
Annex F	Extracts of Guidance issues to Licensing Authorities under Section 182 of the Act

Background Papers:

Statement of Licensing Policy

<https://www.milton-keynes.gov.uk/assets/attach/16458/Milton%20Keynes%20Council%20Adopted%20Licensing%20Policy%20Statement%202018-2023.pdf>

Section 182 Guidance

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