

# ITEM 3

## Licensing Sub-Committee

14 May 2007

Report of: Licensing Officer  
Application: Marios Fish & Chips Limited, Market Place, Olney  
Application 94752  
Reference No:

### 1. APPLICATION

#### Summary of application

To permit late night refreshment Monday to Sundays.

#### Existing Activities

Currently operating as takeaway already

#### Existing Hours

Currently believed to be trading until 2300hrs

#### Proposed Hours

1100 – 0000 (midnight) Monday to Sunday, with the licensable activity of late night refreshment from 2300 – midnight each night. Nb the application was originally until 1am but following representations has been amended until midnight

### 2. BACKGROUND INFORMATION

2.1 As from November 24<sup>th</sup> 2005 the Licensing Act implemented a new licensing system that requires any premise selling hot food or hot drink to the public between 2300 and 0500 to obtain a premise licence (or a Temporary Event Notice) to do so. Before this time (subject to planning permission), takeaway food outlets did not need a licence to operate after 11pm. A copy of the application is provided in Annex A.

Details of licence reviews:

None

### 3. PROMOTION OF LICENSING OBJECTIVES

The applicant has provided the following detail in his operating schedule on how he will promote the licensing objectives:

General

See application

The Prevention of Crime and Disorder

See application

Public Safety

See application

The Prevention of Public Nuisance

See application

The Protection of Children from Harm

See application

**4. RESPONSIBLE AUTHORITIES**

4.1 No representations were received from responsible authorities:

**5. INTERESTED PARTIES**

Ten interested parties (9 as local residents) and the Town Council have made representation on the application. These are detailed in Annex B. Location plan is provided at Annex C. Most of those objecting live in close vicinity of the premise, although Mr Turner is making a representation as a business (as he owns three properties close by).

In summary residents list a number of matters including anti social behaviour, traffic, odour, litter, noise from patrons etc., urination from clientele. Existing trading is alleged to be causing disturbance.

Photos of the area and a map are given at Annex D.

**6. POLICY CONSIDERATIONS**

**The following paragraphs of the Licensing Act 2003 apply to this application**

Sections 16 – 18 of the Act detail the application and determination process.

**The following paragraphs of the Secretary of States Guidance apply to this application**

3.28 Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:

- planning controls;
- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- the confiscation of alcohol from adults and children in designated areas;
- police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance; and
- the power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

These should be supplemented by other local initiatives that similarly address these problems.

3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration, which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport, which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration.

5.50 In respect of some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.

5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e.

those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations.

5.68A Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application.

The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.

5.68B There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.

5.68C As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. 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 representations (including supporting information) presented by all the parties;
- . • this Guidance;
- . • its own statement of licensing policy; and
- . • the steps that are necessary to promote the licensing objectives.

5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do this is not “relevant” for the purposes of the 2003 Act. It is not intended, for example, that the

consideration of the application should be a re-run of the planning application which would have considered a wider range of matters. Premises licences authorise the activities within the scope of the 2003 Act that it is proposed should take place on the premises. For example, a representation from a local businessman which argued that his business would be commercially damaged by the new business for which an application is being made under Part 3 of the 2003 Act would not be relevant. On the other hand, a representation to the effect that nuisance caused by the new business would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance are inadequate would amount to relevant representations and must be considered provided the other conditions necessary to be a relevant representation were fulfilled. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.

5.76 Decisions as to whether representations are relevant should not be made on the basis of any political judgement, which would undermine a natural approach to the issue. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing; i.e. the decision would be that the representations are relevant. Any ward councillor who considers that his own interests are such that he is unable to consider the matter independently should disqualify himself.

5.77 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application for the grant or variation of a premises licence.

## **Reviews**

5.99 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.

5.102 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing

6.3 Some shops may however be known to be a focus for disturbance because youths congregate there and engage in nuisance and anti-social behaviour, including trying to pressurise shop staff to make unlawful sales of alcohol. Where relevant representations are made by an interested party or a responsible authority (particularly, the police) concerning applications for premises licences for such places, or in connection with existing licences, licensing authorities should consider a restriction on opening hours as one mechanism of combating such problems if this would be necessary.

6.8 In relation to the prevention of public nuisance, in each individual case that arises following representations, the licensing authority should consider the potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises in order to examine the potential steps, which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas of residential accommodation. The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.

6.9 Above all, licensing authorities should not fix predetermined closing times for particular areas.

7.19 Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and nuisance or concerns about safety or children, responsible authorities will be expected to have regard to this when scrutinising an application in respect of the activities involved, and not make representations unless there are new issues which could cause them to do so.....On the other hand, where in the minority of cases problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.

7.23 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. As has been said above, conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder

and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek entry or leave.

### **Public nuisance**

7.38 Annex G provides examples of conditions, which relate to public nuisance, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.

7.39 The 2003 Act requires licensing authorities following receipt of relevant representations and, through the making of representations, responsible authorities to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

7.40 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 for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.<sup>6</sup>

7.41 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises, from simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of premises and the type of activities expected to take place there.

7.42 As with all conditions, it will be clear that conditions relating to noise nuisance may in certain circumstances not be necessary where the provisions of the Environmental Protection Act 1990 and of the Noise Act 1996

adequately protect those living in the vicinity of the premises in question. 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 necessary.

7.43 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.

7.45 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from a responsible authority or interested party 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 and to respect the rights of people living near-by to a peaceful night. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

7.46 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of a licence to require premises serving customers from take-aways and fast food outlets from 11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter from its customers. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour. As with all conditions, the licensing authority will have to consider whether such a requirement is necessary having regard to the licensable activities carried on,

the type and characteristics of the premise.

**The following paragraphs of the Licensing Authorities Statement of Licensing Policy apply to this application:**

3.2 The following factors will also be given due weight: -

- Each application will be determined on its own merits having regard to guidance issued under Section 182 of the Licensing Act 2003, and local criteria. The former will take precedence;
- The rules of natural justice will be applied at all times.
- The right of any individual, or body to apply for a variety of permissions is not undermined.
- The statutory right of any interested party or responsible authority to make appropriate representations or to seek a review in respect of an application where appropriate is accepted.
- The direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity at or in the vicinity of the premises. (Note “ in the vicinity” will be decided upon by officers and members of the Licensing Authority as considered appropriate when considering an application, having regard to the characteristics of the neighbourhood) will be given due weight.

5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives

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 localities the Licensing Authority will expect the applicant to have scoped the potential for noise and/or vibration nuisance and factored in suitable control measures.

5.3.4 The Licensing Authority may set an earlier closing time where after representations having been made, it considers this appropriate having regard to the nature of the licensable activities, the amenity of the area, and the impact on the licensing objectives.

5.3.7 All residents living in the vicinity of any licensed premises have equal rights to make observations concerning applications for premises licences and hours of trading, and to receive appropriate consideration to their representations as an interested party. However, the Licensing Authority will disregard irrelevant, frivolous and vexatious representations.

### **7.3 Crime and Disorder**

7.3.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent

these matters occurring.

7.3.2 The Licensing Authority will have particular regard to the likely impact on these matters when considering the location, operation and management of all proposed licence or certificate applications, renewals and variations.

9.1 Care will be taken to ensure that there is not an overlap between the licensing regime and other statutory regulatory arrangements, so that duplication is avoided and the necessary controls are exercised through the most appropriate process.

13.2 The locality within which licensed premises are, or may be located is a major consideration in determining whether a licence should be granted and what conditions should be attached to it. Primary consideration will be given to the direct impact of the licensed activity on those living, working or enjoying the local environment.

13.3 Licensing law is not a mechanism for the general control of any anti-social behaviour being displayed by patrons once they have left the curtilage of the licensed premises, other more specific legislation should be used.

### **13.10 Applications for New Premises**

13.10.1 New premises licences will be granted except where;

- Valid representations are received opposed to the application and the grant of the licence will undermine the licensing objectives.

13.10.2 In considering contested applications the Licensing sub committee will have particular regard to: -

- The occupancy figure for the proposed premises
- The proximity of the premises to others in the area licensed for similar activities, and the occupancy figures for those other 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.

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

19.5.1 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

19.5.2 Where considerations apply to late night refreshment premises, they shall only be taken to apply to their operation between the hours of 11 p.m. and 5 am when a premises licence would be required.

19.5.3 In considering licence applications, the Licensing Authority will consider representations made by interested parties 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:-

- (a) excessive noise and vibration escaping from the premises, including music; noise from mechanical ventilation equipment and human voices.
- (b) disturbance by customers, staff, delivery vehicles, or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7am.
- (c) queuing either by pedestrian or vehicular traffic on land under their control.
- (d) arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local resident's at large events e.g. National Bowl.
- (e) use of gardens and other open-air areas within the curtilage of the premises.
- (f) siting of external lighting,
- (g) increase in refuse storage or additional littering in the vicinity of the premises.
- (h) previous history of nuisance complaints.

20.5.4 When determining applications the Licensing Authority will have regard to any Guidance issued by the Department for Culture, Media and Sport (DCMS).

23.5 The Licensing sub committee will determine each case on its individual merits whilst taking into consideration the terms of this Policy document. Where the Licensing sub committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned on members of the public living, working or engaged in normal activity in the area or in the premise concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.

The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act

also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

## **7. OFFICERS OBSERVATIONS**

1. There are no Mandatory conditions in respect of late night refreshment applications
2. Appendix 3 of the Councils Licensing Policy statement provides a pool of licensing conditions. Conditions 108 -110 refer to Late Night Refreshment
3. It is unclear how the applicant will encourage customers to leave the premise quietly as detailed in his operating schedule.
4. Annex G of the DCMS guidance gives example conditions in respect of Public Nuisance

### **Further details requested of the applicant:**

1. Any additional measures proposed in light of the representations received

### **Further details requested of those making representations: Interested Parties**

1. Details on the number of complaints you have made to Env Health / Police on issues raised
2. Evidence linking litter problems to Marios
3. Evidence linking Marios to youths congregating in the town centre

### **Further details requested of those making representations: Olney TC**

1. Details on the number of complaints received by Town Council
2. Number of residents who have contacted the Town Council
3. Evidence linking Marios to youths congregating in the town centre

## **8. ASSOCIATED PAPERS**

None

### Contact Officer

For further information on this application please contact Ed Fisher on telephone 01908 252409 or e-mail: [eddie.fisher@milton-keynes.gov.uk](mailto:eddie.fisher@milton-keynes.gov.uk)