

Committee: Licensing Sub Committee	Date	Classification Unrestricted	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a new Premise Licence for Milano Express Pizza and Peri Peri, 479 Cambridge Heath Road, London, E2 9BU Ward affected: Bethnal Green West
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1.0 **Summary**

Applicant: **Milano Express Pizza and Peri Peri Ltd (Saidajan Hassankheil)**

Name and Address of Premises: **Milano Express Pizza and Peri Peri
479 Cambridge Heath Road
London
E2 9BU**

Licence sought: **Licensing Act 2003
Provision of Late-Night Refreshments**

Objectors: **Licensing Authority
Environmental Health**

2.0 **Recommendations**

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File
Section 182 Guidance
LBTH Licensing Policy

Corinne Holland
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3.0 **Background**

- 3.1 This is an application for a new Premise Licence for Milano Express Pizza & Peri Peri, 479 Cambridge Heath Road, London, E2 9BU.
- 3.2 The applicant has described the premises as: Pizza and fast food takeaway.
- 3.3 A copy of the application is shown in **Appendix 1**.
- 3.4 The hours applied for are as follows:

Provision of Late-Night Refreshments

Sunday – Thursday 23:00 hours – 01:00 hours

Friday – Saturday 23:00 hours – 02:00 hours

Opening times

Not specified on application

- 3.5 This premise previously had a Premise Licence for the provision of Late-Night Refreshments (Hamlets Pizza) for the following hours:
- Sunday to Thursday, from 23:00 hours to 01:00 hours the following day
 - Friday and Saturday, from 23:00 hours to 02:00 hours the following day

A review of this licence was triggered by the Licensing Authority on the 5th July 2022 which was heard by the Licensing Sub Committee on 11th October 2022. The decision was made to revoke the Premise Licence.

A further application for a Premise Licence was made on 20th January 2023 which was opposed. The Licensing Sub Committee refused this application on 28th March 2023. The applicant appealed the decision to the Magistrates Court but this was later withdrawn at court on the 25th July 2023.

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue is included as **Appendix 2**.
- 4.2 Maps showing the vicinity are included as **Appendix 3**.
- 4.3 Photographs of the premises are included in **Appendix 4**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 5**.

5.0 Licensing Policy and Government Advice

- 5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1st November 2023.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.homeoffice.gov.uk. It was last revised in April 2018.
- 5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

6.0 Representations

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing.
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 9**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.

- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following.
- **Licensing Authority – Appendix 6**
 - **Environmental Health (inc videos) – Appendix 7**
- 6.9 The applicant responded to the Licensing Authorities representation – **Appendix 8**
- 6.10 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Noise (Environmental Health)
 - Trading Standards
 - Child Protection
 - Public Health
 - Home office (Immigration Enforcement)
- 6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 6.12 The objections relate to:
- Public nuisance
 - ASB
 - Crime & disorder
- 6.13 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.
- 6.14 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.
- 6.15 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence,

with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

7.0 Conditions consistent with Operating Schedule

1. One SIA registered member of staff will be on duty after 23:00 hours on Sunday to Saturday.
2. The Licence Holder shall ensure that an incident report book is kept, in which full details of all incidents are recorded. This shall be completed as soon as possible, and in any case no later than the close of business on the day of the incident. The time and date when the report was completed, and by whom, is to form part of the entry with details of the following:
 - a) Any incidents of crime & disorder or anti-social behaviour inside or immediately outside the premises;
 - b) Any ejections of customers;
 - c) any refusals to serve customers
 - d) any faults in the CCTV system,
 - e) any visits by the police or an officer of the Local Authority;
 - f) any call to an emergency service.
3. The incident book is to be kept on the premises at all times and shall be produced to a police officer or authorised officer from the Local Authority upon request.
4. No person shall be permitted to bring alcohol into the premises.
5. The Licence Holder shall install a CCTV system at the premises and ensure that it is maintained in working order. The system shall conform to the following points:
 - a) The CCTV shall monitor all the internal areas of the premises to which the public have access and immediately outside the entrance;
 - b) Cameras on the entrance shall capture full frame, head and shoulders, images of all people entering the premises i.e capable of identification of evidential standard in any light conditions.
 - c) Cameras overlooking the floor areas shall be wide angled to give an overview of the premises.
 - d) The recording device shall be located in a secure area or locked cabinet:
 - e) CCTV will have a monitor to review images and recorded picture quality.
 - f) Digital images shall be kept for 31 days (with date and time stamping) and made available to police or authorised officer from the Local Authority upon request.

- g) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.
 - h) The CCTV equipment shall have a suitable export method e.g CD/DVD writer so that the police can make an evidential copy of the data they require. Copies shall be made available to Police and authorised officers from the Local Authority upon request or within 48 hours at the latest.
 - i) To ensure that no image quality is lost when making a copy. If this format is non-standard then the manufacturer shall supply the replay software to ensure the video on the CD can be replayed on a standard computer
 - j) Should the CCTV become non-functional this shall be reported as soon as possible to the Licensing Authority. Repairs shall commence the next working day or at the availability of the CCTV technician and the Local Authority will be informed when it is complete or if there are any significant delays.
6. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
7. The Licence Holder shall insure staff undertake conflict awareness training.
8. A written record will be kept of all staff who receive such training and a written record will be kept at the premises and made available to a police officer or authorised officer from the Local Authority upon request.
9. No unaccompanied children under 18 years of age shall be allowed in the premises after 23:00 hours.

8.0 Conditions Agreed/Requested by Responsible Authority

None

9.0 Licensing Officer Comments

- 9.1 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.2 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)
- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.25) and censorship avoided (10.17).
- ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.58)

- ❖ Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)

9.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.

9.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

9.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

9.6 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)

9.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.8 In **Appendices 9 – 16** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters previously identified.

10.0 **Legal Comments**

10.1 The Council’s legal officer will give advice at the hearing.

11.0 **Finance Comments**

11.1 There are no financial implications in this report.

12.0 Appendices

Appendix 1	A copy of the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Photographs of the premises
Appendix 5	Other licensed venues in the area
Appendix 6	Representation from LA
Appendix 7	Representation from EH
Appendix 8	Applicants' response to the LA
Appendix 9	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 10	Licensing Officer comments on public nuisance
Appendix 11	S182 advice on public nuisance
Appendix 12	Licensing Officer comments on Crime & Disorder
Appendix 13	S182 advice on crime & disorder
Appendix 14	ASB leaving the premises
Appendix 15	Licensing Policy relating to hours of trading
Appendix 16	Planning