

## Written Submission AB Pizza 149 Layton Road, Blackpool

### General Background

1. The documentation is submitted in advance of the hearing scheduled for 17.30 hours on the 21st of November 2023 to set out why the Committee should consider the application favourably.
2. The application has attracted 1 objection from an interested party, the contents of which will be addressed in this submission.
3. The application is made by Omer Altinok, who has operated the shop for over 9 years.
4. The application was submitted with careful thought and consideration, especially about the views of the Responsible Authorities, the hours applied for were intentionally modest to respect the needs of residents and not cause undue concern to the Responsible Authorities.
5. A series of conditions were offered as a starting point with an open offer of being receptive to any other controls they deem appropriate.
6. As a result of this diligent and considerate approach no objections have been submitted by the relevant Responsible Authorities.

### Policy and Guidance Considerations

#### Extract from Sec 182 Guidance

*8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.*

*8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.*

The applicant is very familiar with the local issues from his experience of operating the shop for over 9 years He has a positive relationship with many of the residents and does not recall one occasion in his 9 years where anyone has raised a complaint with him.

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### Extract from Blackpool Statement of Licensing Policy

*4.4.1 There are no standard permitted hours for the sale of alcohol prescribed in the Act instead the Council has the power to make decisions on hours based on local knowledge. In some circumstances, staggered licensing hours will allow for a more gradual dispersal of customers reducing potential disorder and disturbance at for example late night food outlets and taxi ranks. There is no general presumption in favour of lengthening licensing hours and the four licensing objectives will be the paramount consideration at all times*

The applicant has looked at similar areas where there is a mix of commercial and residential properties, including Whitegate Drive and Highfield Road. Whilst both areas have considerably greater outlet density the hours that are in place in these areas provide a reasonable framework as to what is acceptable. Whitegate Drive takeaways range from midnight to 0.230hrs ( WA0088). Highfield Road also has premises that are Licenced till 01.00hrs

7. The hours chosen have not attracted objections from Responsible Authorities which needs to be taken as a measure of reassurance. **The applicant is however content to reduce the hours of operation from Sunday – to Thursday to 23.00hrs-00.30hrs.**

### **Relevant Representation**

#### **Public Objection**

*We wish to formally object to this application. We live directly opposite and currently have the following issues which will be compounded if they are allowed to open to 1am. This is a residential area, the quieter part of Layton Road.*

*Noise, this has been a constant problem since the business first opened, we have previously complained about the noise and at the time the business was opening until 12am even though they didn't have a license for this .*

*The drivers, and there seems to be a lot of them for a small takeaway business, are noisy especially at end of shift, they also play loud music and sit in vehicles with idling engines whilst waiting for work. When you are up for work at 5am this becomes extremely annoying, double glazing or not you can hear everything including every thing discussed between the drivers.*

*Not only are the delivery drivers an issue but customers under the influence of alcohol also tend to be 'rowdy' and we have in the past had altercations happening in and around this premises spilling out on to the street with police involvement . This will get worse when they are the only takeaway business in the area open till the early hours of the morning.*

*The number of drivers currently used by AB Pizza cause massive parking issues on the road which is already limited.*

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*The rubbish generated by their customers usually ends up all over the road so much so we now have seagulls in permanent residence. We have never witnessed anyone from the business clearing away any rubbish dumped by their customers.*

*If you require any further clarification please do not hesitate to contact us.*

8. The first part of the objection relates to noise complaints that have been made and alleges that the business has traded in hours of the day when a licence is required.

This allegation is denied and the lack of any formal objection from Environmental Protection suggests that if complaints had been received by the Council they have not been substantiated. If there was any merit to previous complaints one would expect communication from the Responsible Authorities insisting that the applicant adopts measures to avoid future problems. No such communication has occurred. See paragraph 53 of the Daniel Thwaites Decision which provides a relevant statement about the inference of no objections for a Responsible Authority.

9. The second part of the objection relates to nuisance from delivery drivers. Layton Road does not have parking restrictions such as a residents-only scheme and during the research process, it was noted that at 151 Layton Road, there is a 24-hour taxi service advertised. Advert as attached as **Annex 1**.

10. Research has also shown that parking does from time come up as an issue in Licensing hearings. 2 cases are shown below.

<https://councildecisions.bury.gov.uk/documents/g3066/Printed%20minutes%2021st-Oct-2021%2013.00%20Licensing%20Hearing%20Sub%20Committee.pdf?T=1>

This case heard by the Licensing Authority in Bury discussed parking nuisance from customers but accepted there was an absence of any real evidence that issues would prevail.

<https://southribble.moderngov.co.uk/mgAi.aspx?ID=5562>

This case heard by South Ribble Borough Council considered the objections raised by the public regarding parking concerns. The applicant's solicitor suggested that parking was not a relevant matter to be considered in Licensing Hearings. However, the Local Authority held on to the issues as the problems associated with parking were in their statement of licensing policy. The issue once again boiled down to a lack of actual evidence of harm along with a concession made by the Licence Holder that he had secured a certain amount of parking spaces for customers.

The Section 182 Guidance does not list parking as a matter that could be envisaged under the Public Nuisance Objective and the Blackpool Policy also does not discuss parking. However, the Guidance does give a very broad meaning of what could be included in the Prevention of Public Nuisance Objective.

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### Extract from the Section 182 Guidance

*2.20 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter*

*2.21 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. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.*

Other Authorities in their Guidance (Medway) give advice that applicants should consider parking by customers and do their level best to ensure that a nuisance to residents is not caused by implementing measures such as signage advising customers not to block driveways etc.

The issue raised by the objector whilst not evidenced would seem to be reasonable. The caveat is that actual problems may not be from the delivery drivers but other businesses such as the 24-hour taxi firm next door or other people attending the area.

Conditions attached to a licence to control the behaviour of delivery drivers may be somewhat unachievable, especially when they are away from the premises. The drivers are not employees but sub-contractors.

It would be achievable for the applicant to have an up-to-date list of drivers and vehicle details along with a code of conduct for drivers to follow when collecting food orders. The code of conduct could specifically target the issues raised; an example could be.

**Turn engines off on arrival.**

**Keep any music turned off or at a low level when waiting.**

**Pull away from the area at a slow speed to avoid causing disturbance to residents.**

The applicant would be happy to adopt such a measure and would consent to it be added as a condition of the licence.

11. The third issue raised is that of rowdy drunken customers. You will note from the premises plan that it has a very small footprint and can accommodate no more than a couple of customers at a time.

The Police have not flagged any concerns with the premises or location.

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A request for incident and crime data was made to Lancashire Constabulary on the 26<sup>th</sup> of October 2023. The date for compliance with this request is the 23<sup>rd</sup> of November 2023. At the time of writing the information is not in our possession.

The applicant can state that he cannot recall any incidents where the police have had to speak with him about the behaviour of his customers in over 9 years of operation.

12. The final issue raised is that of litter. The street scene photo attached as **Annex 2** shows a Council bin sited directly outside the premises. Alongside this, the applicant has a valid waste contract with the Council for the collection of his commercial waste **Annex 3 Restricted**.

Enveco an arms-length company of the Council are responsible for street cleansing and emptying the public bin. Contact has been made with Enveco who report no issues with litter in the area or associated problems with litter outside the takeaway. A redacted copy of the e-mail from Enveco is attached as **Annex 4**

### Conclusion

Passing reference within the submission has been made to the absence of any Responsible Authority in these proceedings. It is of considerable importance to highlight this as they are the Licensing Authorities 'experts in their respective fields.

The case of Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin), CO/5533/2006 deals with many points. A copy of the case is attached as **Appendix 5**

Commentators will pull out the relevant parts of the case to assist their own arguments one of which is there must be tangible or empirical evidence to support any representations, mere speculation will not be enough.

The GOV.UK web site provides a short narrative about the case which is as follows;

*This case, referred to as 'the Thwaites case', is important because it emphasises the important role that Responsible Authorities have in providing information to decision makers to contextualise the issue before them.*

*This case is sometimes misconstrued as requiring decisions to be based on 'real evidence', and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the Act is to prevent problems from happening. Decisions can and should be based on well-informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant when opposing grant applications.*

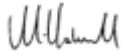
*The Honourable Mrs Justice Black said:*

*[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require*

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*them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.*

The applicant has demonstrated a sensible response to the objection by agreeing to modify the times of operation and adopting a condition to target the issues raised around delivery drivers. In addition, he has obtained two letters from residents confirming that he is a responsible and approachable operator, copies of the letters are attached to this submission.



Mark Marshall ( FCILEX)

Date: 15<sup>th</sup> November 2023

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