



Licensing Sub-Committee agenda

Date: Thursday 4 April 2024

Time: 10.30 am

Venue: Via Video Conference

Membership:

P Gomm, P Griffin (Chairman) and J Towns

Webcasting notice

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Agenda Item	Page No
1	Introductory remarks by the Chairman
2	Apologies for absence
3	Declarations of interest
	To receive any disclosure of disclosable pecuniary interests by Members relating to any items on the agenda. If any Member is uncertain as to whether an interest should be disclosed, he or she is asked if possible to contact the District Solicitor prior to the meeting.

Members are reminded that if they are declaring an interest, they should state the nature of that interest whether or not they are required to withdraw from the meeting.

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|----------|--|----------------|
| 4 | Hearing Procedure Rules | 3 - 10 |
| | To note the hearing procedure rules and virtual licensing sub-committee procedural rules. | |
| 5 | Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT | 11 - 42 |
| | To consider an application under s.17 of the Licensing Act 2003 for a new premises licence in respect of Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT (report attached). | |

If you would like to attend a meeting, but need extra help to do so, for example because of a disability, please contact us as early as possible, so that we can try to put the right support in place.

For further information please contact: Liz Hornby at democracy@buckinghamshire.gov.uk

Addendum Licensing and Regulatory Sub-Committee Virtual Procedural Rules

Procedure at Hearings before the Licensing Sub-Committee (“LSC”) in relation to matters under the Licensing Act 2003 as amended (“The 2003 Act”) **except** Interim Hearings (Summary Review of a Premises Licence) conducted pursuant to Section 53B of the Licensing Act 2003, as amended (separate Procedure) or as otherwise provided.

Hearings for Gambling Premises are dealt with under the Gambling Act 2005 as amended.

Introduction

The Licensing Act 2003 and the Licensing Act 2003 (Hearing) Regulations 2005 provide flexibility to Licensing Authorities in determining their own hearing procedures. Buckinghamshire Council has decided to hold such hearings remotely in accordance with these procedural rules.

Administration in Relation to the Hearing

Prior written notice of the hearing will have been given to the interested/relevant parties.

- (a) Where a party has informed the Council that they will not be attending or be represented at the hearing it may proceed in their absence.
- (b) Where a party has not replied to the notice, does not attend and is not represented then the LSC may proceed with the hearing in that party’s absence or adjourn the hearing if it is considered necessary in the public interest to do so.
- (c) If a party has indicated they will attend but does not appear, that party must inform the Council of any delay - with reasons - and in consideration thereof the LSC can decide to proceed with the hearing or adjourn to later the same day or another time. If a party is more than 15 minutes late and has not contacted the Council with details of any delay – the LSC shall proceed with the hearing unless it is in the public interest not to do so and shall adjourn the hearing to later on the same day or another date.

If the hearing is held in a party’s absence, the LSC will still consider the application, representation or notice made by that party.

A hearing can be dispensed with if all parties give notice that they consider a hearing unnecessary. If this is the case the application/notice will be dealt with by way of a determination.

Representations can be withdrawn by prior notice up to 1 working day before the hearing or orally at the hearing.

At the hearing, any party can be assisted or represented by any person whether or not that person is legally qualified.

Account can be taken of documentary or other information produced by a party in support of their application, representation or notice (as applicable) if provided either at least 1 working day before the hearing or - with the consent of all other parties - at the hearing, in which case sufficient copies are required to be provided for all relevant parties. Any party wishing to call another person (other than a person representing them) to make oral representations must provide details of this to the Council within the time stated in the Notice of Hearing which the Council will serve on the Parties. At the beginning of the hearing the LSC will consider any such requests and confirm whether permission is granted for that person to speak.

The LSC may disregard any information which is not considered relevant to the application/representation/notice and the promotion of the licensing objectives.

The purpose of a hearing is to enable those with a right to appear to amplify their written application or representation and to test the case of their opponents. It is also to assist the LSC to gather evidence and understand the relevant issues. The parties (including other persons on their behalf) will be allowed an equal reasonable period of time to address the hearing and ask questions. The Chairman may set a maximum period of time on how long each party may speak, progressing without undue delays and ensuring that there is a fair hearing. Where the representations made relate to the same or similar issues, a spokesperson should be appointed where possible to speak on behalf of any person who has made a written representation.

The Decision of the LSC will be made after the close of the hearing when the LSC retires with the Democratic Services Officer and the Legal Advisor to the sub-committee in a private session to consider all the evidence and submissions made at the hearing.

The decision of the LSC will be communicated to all parties by way of a written Decision Notice issued by Legal Services. They will endeavour to serve the notice within 5 working days of the hearing and if there is to be a delay in issuing such a notice; the licensing officer will communicate with all parties. The notice will be dated and set out the provisions of the right to appeal to the Magistrates Court.

The LSC may depart from this procedure (as varied/amended from time to time based on changes to law and practice) if it considers reasonably necessary and proportionate.

Access to Information

The Council can hold and alter the frequency and occurrence of hearing without requirement for further notice.

These Regulations make provision for local authority members and officers, and the public, to have access to documents without attending council buildings and it will be sufficient for local authorities to publish the documents on their website. This includes notices, agendas, reports, background papers and minutes. The Proper Officer will give the requisite notice to the public of the time of the hearing, and the agenda, together with details of how to join the hearing which will be available on the website.

Time and Place of Hearing

All hearings will be held remotely, including by (but not limited to) telephone conferencing, video conferencing, live webcast, and live interactive streaming unless a party can show good and sufficient reason why the hearing should be held in person. Where a party has notified the Council that they wish to attend a remote hearing but are unable to access the hearing remotely, for whatever reason, the Council will endeavour to make provision for them to be able to view the hearing at Council offices. The Council will use Microsoft Teams to hold virtual hearings and will invite external participants to virtual hearings, if any, via email or telephone. Virtual hearings will be webcast where the hearing is held in public via a link published on the meeting webpage.

The Constitution states that when reasonably practical, a sub-committee hearing should be held at the Council facility which is closest to the premises or issue that is the subject of the hearing. However, this requirement is disapplied in respect of remote hearings.

During the Hearing

It is a requirement for such hearings that:

- a) proper notice is given, with all papers served timeously on the authority and published online;
- b) the actual parties to the hearing are able to participate;
- c) any member of the public can see or hear, albeit not participate in, the hearing.

Although held in a virtual format, hearings dealing with new licences or variations to existing licences will follow the standard procedure. Panel Members may ask questions of any party at any time. Questions are usually taken after each person has spoken. It is helpful to undertake a document check at the start of the hearing.

In terms of issues that may arise during the hearing the following rules apply:-

Quorum for Hearings

The rules for quorum will still apply. This is 3 Councillors for a licensing or regulatory sub-committee. It is also considered good practice to have a reserve member, in case of interests. The constitution states that if a quorum is not present within 15 minutes of the scheduled start of the LSC or such longer time as allowed by the Chairman, the business of the hearing will be adjourned. The Chairman may allow for flexibility around the start time of the hearing where there are any technical issues.

In the event of any apparent failure of the technology the Chairman should immediately determine if the hearing is still quorate. The Chairman could adjourn for 10-15 minutes to allow the connection to be re-established. If an individual remote participation fails the Chairman may call a short adjournment. As the hearing must have 3 members present, the hearing will be reliant on the lost connection being re-established to ensure all members are present for the entire discussion in order to hear all of the facts and vote on the matter.

Only 3 members are permitted on LSC for each hearing (as per Section 9 of the Licensing Act 2003 and the Constitution Terms of Reference for the LSC). The reserve member is present in case an interest arises at the beginning of the hearing or one of the 3 members identified as being on the LSC fails to attend the virtual hearing. It is only those 3 members who have been identified as being on the LSC for that hearing who can ask questions of the other parties.

A reserve member would not be able to participate if the technology fails for one of the members present as whilst they would be listening they will not have taken an active role nor been included in the process/asked to see if they have any questions etc.

Attendance at hearings and webcasting

A roll call or introductions will be made at the start of the hearing to record those present. There is no requirement for councillors to sign their names on the attendance sheets when attending a virtual hearing. The Democratic Services Officer will maintain a list of attendance throughout the hearing.

To be classified as a 'member in attendance' and attend the hearing remotely, the following conditions must be satisfied;

- a) Councillors sitting on the Sub-Committee must be able to hear and be heard and (where practicable) see and be seen by parties in attendance at the hearing.
- b) This full requirement also extends to parties attending to exercise a right to speak at the hearing.
- c) All other members of the public must as a minimum be able to hear and if practicable see the proceedings.

In practice this means that if councillors and speaking members of the public can be heard and hear each other and other members of the public not speaking can hear, this would fulfil the requirements of holding a virtual hearing.

Members of the press and public may only be excluded from a hearing in accordance with the Access to Information Rules.

The Regulations state that hearings being open to the public include access by remote means. Such access includes (but is not limited to) video conferencing, live webcast, and live interactive streaming and where a hearing is accessible to the public through such remote means the hearing is open to the public whether or not members of the public are able to attend the hearing in person. For clarity, a hearing recorded and then posted online after the event would not satisfy this requirement.

In the event that the live webcast fails and cannot be resumed the hearing will be opened and adjourned to allow for it to take place at a later date (the date and time of which will be fixed prior to the matter being adjourned).

The people on the Teams call who are present throughout the hearing are the Members of the Sub-Committee, any officer supporting the hearing and those who have submitted valid representations, applicant and/or legal representative. The public gallery, where Members can sit and observe the hearing alongside members of the public, is the webcast version.

Conflicts of Interest

Councillors should consider if they have an interest, and, if required, seek advice from the Monitoring Officer, or their deputy, before the hearing starts. If a Councillor appointed to a licensing hearing considers that their interest is prejudicial they should notify Democratic Services as soon as possible so that an alternative councillor can be appointed to the licensing hearing.

Members of the LSC must consider beforehand if they need to declare any personal interests and

whether their personal interest is also a prejudicial interest in which case they will not be able to attend the hearing. Members who have any Disclosable Pecuniary Interests will not be able to attend the hearing either. Members should also consider beforehand if they have or would be considered to have predetermined the matter in which case they should also distance themselves from the determination of the matter and not attend the hearing.

Minutes of hearings

The Minutes of hearing will be published on the website.

Questions

Parties can ask questions of other parties in accordance with the procedure below. The Chairman can stop a party asking questions if they feel the questions are unnecessary. Parties are expected to treat other parties with respect and any form of harassment or excessive questioning will not be tolerated. In such cases the Chairman will ask the party to discontinue that type of questioning. The Chairman can require any person (including any of the parties) who is disrupting the proceedings to leave the hearing.

Order of business (as normal)

1. The Chairman will open the hearing and start the introductions of the LSC and Officers and ask each party to introduce themselves. The Chairman will confirm that if a party is not present their representations/application will have been read and will be considered in reaching the decision.
2. The Chairman will address any interest arising under the Code of Conduct.
3. The Chairman will consider any submitted requests from a party for permission for another person to appear at the virtual Hearing and any other procedural matters. If necessary, the sub-committee will retire to deliberate before making a decision.
4. If all parties present confirm that they have seen and understand the procedure to be followed at the virtual hearing and agree they are ready to proceed then the hearing **shall commence as set out from para 9 below.**
5. The Chairman will remind everyone that the purpose of the virtual hearing should be borne in mind at all times i.e.
 - to enable those with a right to appear at the virtual hearing to advance their point of view and concerns and to test the case of their opponents and
 - to assist the LSC to gather evidence and understand the relevant issues.
6. The Chairman will confirm what advance papers have been received and that these have been read and therefore there is no need to repeat these matters.
7. The Chairman will make clear that parties should only address the LSC in relation to matters previously raised/submitted. Late evidence to be submitted at the hearing will only be considered by the LSC with the consent of all parties present.
8. The Chairman will then outline the procedure to be followed by reading out the order of oral presentations **unless** all parties present have confirmed that they have seen and understood the

procedure and are ready to proceed with the virtual Hearing.

9. The Chairman will ask the Applicant whether they wish to make any amendments to their application with a view to addressing issues raised by the representations.
10. Order of oral presentations:-
 - a. The Licensing Officer will present their report outlining the details of the application/notice and representations received.
 - b. Any party may question the Licensing Officer.
 - c. The Members may question the Licensing Officer.
 - d. The Applicant will present their case and call any witnesses.
 - e. Any other party may question the Applicant.
 - f. The Members may question the Applicant.
 - g. The Responsible Authorities, who made representations. will present their case in turn and call any witnesses.
 - h. Any party may question the Responsible Authorities.
 - i. Any Members may question the Responsible Authorities.
 - j. Each Interested Party will present their case in turn and call any witnesses.
 - k. Any other party may question the Interested Party.
 - l. The Members may question the Interested Parties.

Once they have made their representations under the requirements of the constitution they will need to switch off their microphone and not participate any further in the hearing unless they are asking any questions or wish to sum up. No speaking is timed.

11. Before moving onto the next party at any time during the procedure above, the Chairman will check there are no further points the current party wishes to make or any further questions that need to be put to that party.
12. There may be a discussion at the hearing, on a without prejudice basis, where each party will be asked to address/give their views on any proposed conditions and suggest any other appropriate conditions to assist the Sub-Committee. Any agreed conditions may be incorporated into the Decision Notice if the application is successful. However, the LSC are to determine any final conditions that will apply to the licence.
13. Each party will be invited to make closing submission in the order as set out in paragraph 10.
14. The Chairman will then close the hearing and the LSC will meet (privately) virtually together with the Democratic Services Officer and Legal Advisor for the matter to be determined.
15. The LSC will come to a decision which will be sent to the Applicant and all other parties' who submitted relevant representations within the time limits set out in this procedure and Regulations together with details of the right of appeal.

When can the Chairman be interrupted?

There are circumstances allowed for in the Constitution where the Chairman can be interrupted such as:-

- Technology is not working effectively.
- Officer needs to provide advice.
- Point of order or personal explanation

or any other area where the Constitution or Chairman allows.

Disturbance during proceedings

The Constitution states that if anyone interrupts proceedings the Chairman will warn the person concerned and if they continue to interrupt the Chairman will order their removal from the virtual hearing room. There may be circumstances where the person needs to be removed immediately, for example if they are being inappropriate, and the Chairman can do this by muting their microphone. If there is a general disturbance making orderly business impossible, the Chairman may adjourn the hearing for as long as they consider necessary.

Adjournments

People will remain on the call with mics muted and cameras off until the hearing starts again. The Chairman may also want to consider having a comfort (screen) break for longer hearings. If there is a problem with the technology the Chairman should pause the hearing until that issue has been resolved. However, this does not stop a hearing going ahead because a person does not have access to the required technology in the first place. If technology fails for a wholly remote hearing, and the hearing is no longer open to the public, any decisions made could be challenged as unlawful which renders the whole hearing incapable of proceeding and therefore the Chairman should adjourn until the remote hearing can be restored within a reasonable period, or at a time and date fixed by the Chairman. Any interested party eligible to speak who attends to exercise their right to speak and is unable to do so renders only their item incapable of proceeding unless they are happy to submit their comments through a written representation.

The Council will try and achieve the best possible outcome.

Deliberations and Exclusion of the Press and the Public

Under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the licensing authority may exclude the public from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing or part of that hearing taking place in public. In addition there may be information in the agenda pack pertaining to the hearing which will be exempt from publication or discussion in public under Schedule 12A of The Local Government Act 1972 as amended. In these circumstances the public will be excluded from part or the whole of the hearing as appropriate.

At the conclusion of the hearing, the LSC together with the Democratic Services Officer and Legal Advisor, will remain in a private virtual meeting in order to deliberate on the decision. Interested parties will then be notified of the outcome of the hearing in writing after the meeting in accordance with required timescales.

Each Member in remote attendance must ensure and verbally declare that there are no other persons present who are not entitled to be (either hearing or seeing) consideration of such items, and/or recording the proceedings.

They may depart from this procedure (as varied/amended from time to time based on changes to

law and practice) if it considers it necessary and/or equitable to do so.

NOTE

IN PRODUCING THIS PROCEDURE, THE FOLLOWING HAVE BEEN CONSIDERED: -

- Licensing Act 2003 *as amended* - and Explanatory Notes
- National Guidance
- The Licensing Act 2003 (Hearings) Regulations 2005 as amended.
- The Human Rights Act 1998.
- Local Government Act 1972 as amended.

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Stacey Bella – Licensing Officer
Report Author	Stacey Bella – Licensing Officer
Ward/s Affected	Cliveden Ward

1. Purpose of Report

To provide Members with information enabling the determination of an application for a new Premises Licence, in respect of which relevant representations have been received.

The Application has been submitted by Em Pho Limited of Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT (“the applicant”) in respect of Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT (“the premises”)

2. Background

2.1 The premises consist of the ground floor of Unit 3, Eton Place which is situated in a central location within Burnham High Street. The surrounding area is made up of a mix of retail, commercial and residential units.

A plan showing the premises location is attached to this report marked **Appendix 1**.

2.2 Allegations of offences under the section 136 of the Licensing Act 2003 (unauthorised alcohol sales) have been made to the Licensing Department in the period prior to a valid application being received and also during the consultation period. During this time officers have conducted visits to the premises and, in line with Buckinghamshire Council’s Licensing Policy, have provided both verbal and written advice. On one occasion a formal written warning was issued in relation to this offence. A copy of the warning letter is attached as **Appendix 10**.

3. The Application

3.1 This application is for a new Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application is attached to this Report marked **Appendix 2**. A plan of the “premises” is attached **Appendix 3**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
The sale by retail of alcohol: On the premises	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00
Recorded music: Indoor	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00
Hours premises are open to the public:	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00

3.3 The applicant requested to amend the original timings which were stated on pages 2-3 of the application form **Appendix 2**. This was in response to objections received and also in line with the public notice. A copy of an email confirming the changes to the timings is attached as **Appendix 4**.

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** No response

4.1.2 **The Licensing Authority:** No objection, **Appendix 5**.

4.1.3 **The Fire and Rescue Authority:** No objection, **Appendix 6**

4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received.

4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** No objection, **Appendix 7**

4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received.

4.1.7 **The Safeguarding and Child Protection Unit:** No response received.

4.1.8 **The Primary Care Trust:** No response received.

4.2 **Any other persons:** One (1) objection was received during the 28 day consultation period on the grounds of public nuisance and the protection of children from harm licensing objectives. **Appendix 8**.

4.3 A further email submission was made by the objector. This is attached as **Appendix 9**.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received largely raise the following issues:

- The representation mentions concerns regarding noise and antisocial behaviour from the restaurant and its clientele, causing a public nuisance and making the surrounding area unsafe for children.

- The representation also mentions concerns that unauthorised licensable activities have been carried out at the premises.

5.2 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties.

6. Policy Considerations

6.1 Regard must be had to the Council's adopted Licensing Policy published February 2022 when determining this application. Of particular relevance (but not limited to) the following:

Anti-social behaviour

2.36 Licensing is not the primary mechanism for controlling anti-social behaviour away from premises and beyond the direct control of operators. However, it is a key aspect of such control and licensing law is part of the holistic approach to the management of the evening and night time economy in town and city centres as well as rural areas and to some extent during the daytime too. Therefore, this Policy acknowledges the contribution of individual premises and, in certain circumstances, groups of premises to anti-social behaviour.

Prevention of a public nuisance

3.36 In considering all licence applications, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.

3.37 Particular measures include:

Noise escape

The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices. In appropriate circumstances and where not included in the operating schedule, a condition may be imposed requiring the assessment by the applicant (either with or without the involvement of Environmental Health), of potential noise sources which could cause disturbance to those in the vicinity and to identify and implement appropriate control measures.

Customer departure. The steps taken or proposed to be taken by the applicant to prevent disturbance by customers leaving. Such steps will include proper winding down policies so that customers leave gradually and quietly, notices to customers requesting respect for neighbours, the use of dedicated taxis, management of queues for taxis, direction of customers away from residential areas, supervision of exterior areas, requesting customers to respect neighbours and prevention of customers gathering outside the premises.

Standards of management

3.14 The Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects this to be demonstrated through the operating schedule. When assessing the applicant's or licensee's ability to demonstrate a commitment to high standards of management the Licensing Authority will take into account whether the applicant or licensee:

- Can demonstrate comprehensive knowledge of best practice.
- Has sought advice from the responsible authorities.
- Has implemented any advice that has been given by the responsible authorities.
- Is able to understand verbal and written advice and legal requirements.
- Can demonstrate knowledge of the licensing objectives, relevant parts of the Policy and their responsibilities under the Licensing Act 2003.
- Is able to run their businesses lawfully and in accordance with good business practices.
- Can demonstrate a track record of compliance with legal requirements.

6.2 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

Prevention of a public Nuisance

2.15 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.

2.16 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.

2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. 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 appropriate.

2.21 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. However, it would be perfectly reasonable for a licensing authority to impose a condition, following

relevant representations, 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, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

7. Links to Council Policy Objectives

- 7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

8. Resources, Risk and Other Implications

- 8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.
- 8.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.
- 8.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. The persons making relevant representations have a right to respect for their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.
- 8.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.
- 8.5 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the

interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interfered with.

- 8.6 Therefore if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.
- 8.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.
- 8.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

9. Determination by the Licensing Sub-Committee

- 9.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

- 9.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.
- 9.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.
- 9.4 The following options are available to the Licensing Sub Committee:
 - 9.4.1 Grant the Premises Licence - subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.
 - 9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.

- 9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.
 - 9.4.4 Reject the whole of the Application.
 - 9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).
- 9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

10. Conditions offered in the Operating Schedule

The prevention of crime and disorder

1. The premises shall install and maintain a comprehensive CCTV system in accordance with any minimum requirements of Thames Valley Police.
All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.
All recordings shall be stored for a minimum period of 28 days with date and time stamping.
Viewing of recordings shall be made available upon the request of Police or an authorised officer throughout the entire 28 day period.
2. Notices will be displayed prominently at the premises advising members of the public that CCTV is in operation.

Public Safety

3. Alcohol and soft drinks will be served in plastic bottles or toughened glass.
4. Customers carrying open or sealed bottles or glasses of alcohol will not be permitted to enter to the premises.
5. Where available, bottles will be made of plastic.
6. All bottles and glasses are to be removed from public areas as soon as reasonably possible once they are empty.

The prevention of public nuisance

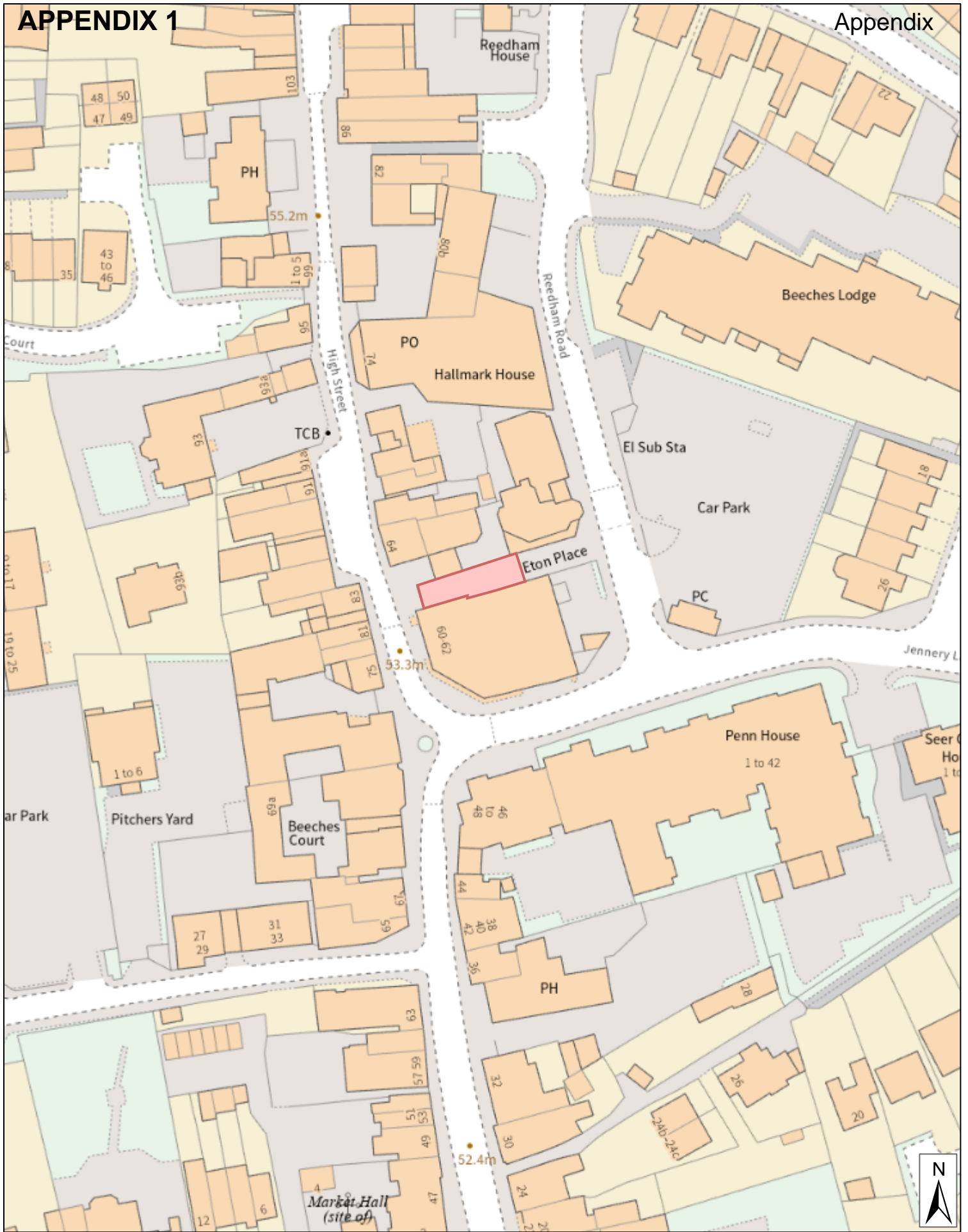
7. Notices, at least A4 in size, shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
8. A noise management plan will be in operation at the premises ensuring that no noise or vibration shall emanate from the premises which would give rise to a statutory noise nuisance as determined by the local authority Environmental Health Officers.
9. The volume of recorded music will not exceed that of background levels.
10. All windows and external doors shall be kept closed, except for the immediate access and egress of persons.

The protection of children from harm

11. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

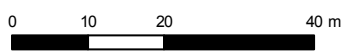
Informative/s -

Officer Contact:	Stacey Bella (01296 585 336) stacey.bella@buckinghamshire.gov.uk
Background Papers:	Application Ref PR202310-334574 Licensing Act 2003, as amended. Licensing Policy – As adopted March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.



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Annex 1 - Location Plan Em Pho



1:1,000

Copyright:
Author: Enter name
Page 19
Date: 21/03/2024



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Buckinghamshire Council Premises licence application Form Transcript

Applicant

Are you an agent acting on behalf of the applicant?

No

Agent (if applicable)

Applicant Details

Type of applicant

organisation

Applicant(s)

Name

em pho ltd

Email

[REDACTED]

Phone

[REDACTED]

Address

Unit 3, 64 High Street, Burnham, SL1 7JT

Registered number

14764843

Details

Limited Company

Right to work documents (if applicable)

Partners (if applicable)

Company Number (if applicable)

14764843

Premises

Premises name

Em Pho

Premises address

64 high street, Eaton House, Unit 3, Slough, SL1 7JT

Phone number at premises

01628290590

Premises description

Em Pho is going to be a Vietnamese and Chinese cuisine restaurant. It will have up to 40/45 people sitting. We will be serving alcohol to customers. there will be a small bar area in the premises.

Non-domestic rateable value of premises

16,250

Licence details**Licence start date (if applicable)****Do you want the licence to only be valid for a limited period?**

No

Licence end date (if applicable)**Do you expect 5,000 or more people to attend the premises at any one time?**

No

Attendance Number (if applicable)**Licensable Activities****Opening Times****Times**

Monday: 12:00 - 14:30, 17:00 - 22:30

Tuesday: 12:00 - 14:30, 17:00 - 22:30

Wednesday: 12:00 - 14:30, 17:00 - 22:30

Thursday: 12:00 - 14:30, 17:00 - 22:30

Friday: 12:00 - 14:30, 17:00 - 22:30

Saturday: 12:00 - 14:30, 17:00 - 22:30

Sunday: 12:00 - 14:30, 17:00 - 22:30

Recorded Music**Times**

Monday: 12:00 - 14:30, 17:00 - 22:30

Tuesday: 12:00 - 14:30, 17:00 - 22:30

Wednesday: 12:00 - 14:30, 17:00 - 22:30

Thursday: 12:00 - 14:30, 17:00 - 22:30

Friday: 12:00 - 14:30, 17:00 - 22:30

Saturday: 12:00 - 14:30, 17:00 - 22:30

Sunday: 12:00 - 14:30, 17:00 - 22:30

Location

Indoor

Additional details

Music play on the built in speaker via Bluetooth device.

Sale by Retail of Alcohol

Times

Monday: 12:00 - 14:30, 17:00 - 22:30

Tuesday: 12:00 - 14:30, 17:00 - 22:30

Wednesday: 12:00 - 14:30, 17:00 - 22:30

Thursday: 12:00 - 14:30, 17:00 - 22:30

Friday: 12:00 - 14:30, 17:00 - 22:30

Saturday: 12:00 - 14:30, 17:00 - 22:30

Sunday: 12:00 - 14:30, 17:00 - 22:30

Location

On the premises

Adult entertainment

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

No

Specify any adult entertainment (if applicable)

Do you intend to provide gaming machines on the premises?

No

Designated premises supervisor details

How will the consent form of the proposed designated premises supervisor be supplied to the authority?

DPS to provide

Full name

Mr shahzad anwar

Date of birth

██████████

Address**Upload the consent from the proposed designated premises supervisor****Personal Licence Number**

PA8902

Personal Licence Issuing Authority

Slough Borough Council

Licensing objectives**General licensing objectives**

None

Prevention of crime and disorder

A C.C.T.V. system has been installed and is working to the satisfaction of Thames Valley Police and the Licensing Authority. A notice will be displayed at the entrance to the premises advising that C.C.T.V. is in operation. At least one C.C.T.V. camera will be in operation at the front of the premises at all times when the premises is in use.

Public safety

Alcohol and soft drinks will be served in plastic bottles or toughened glass. Customers carrying open or sealed bottles or glasses will not be admitted to the premises at any time. All bottles sold will be made of plastic (where available). All bottles and glasses are to be removed from public areas as soon as the contents have been drunk or are empty

Prevention of public nuisance

A noise management plan has been devised and is in operation at the premises. Noise or vibration from the premises will be maintained at a level that will not be audible at the façade of any neighbouring noise sensitive premises. . Doors and windows will be kept closed when regulated entertainment is taking place. The premises are air-conditioned to avoid the need to open doors and windows for ventilation.

Protection of children from harm

When children are allowed on the premises, a “no smoking” area of such a size and design that it genuinely provides a suitable, comfortable area for children and families wishing to be separated from smoking areas will be available.

Premises plan upload

Upload the premises plan

["PLAN (1).pdf"]

Declaration

I/We apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described above in this application and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003.

[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] **I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK** (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK.

The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work.

It is an offence liable to summary conviction to a fine of any amount under section 158 of the Licensing Act 2003, **to make a false statement in or in connection with this application.**

It is an offence under Section 24B of the Immigration Act 1971 **for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so** by reason of their immigration status. **Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty** under Section 15 of the Immigration, Asylum and Nationality Act 2006 and pursuant to Section 21 of the same Act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified.

Full name: shahzad anwar

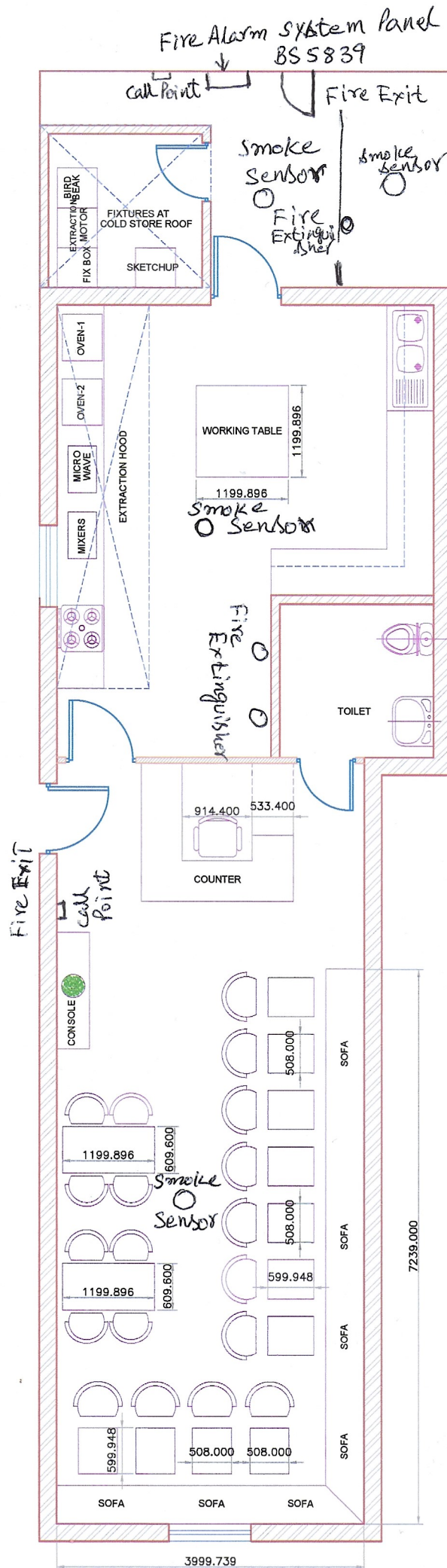
Capacity: Manager

Date: 30 October 2023

2nd Applicant (if applicable):

Capacity:

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From: [shahzad anwar](#)
To: [Stacey Bella](#)
Subject: [EXTERNAL] Re: LA2003 Application for a new premises licence - Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT - Amended timings
Date: 22 March 2024 13:33:51

Dear Miss Bella,

Yes, I do confirm the timing stated above are correct and I wish to amend the hours on the application to reflect the timings stated above.

kind Regards
 Shahzad anwar

On Friday, 22 March 2024 at 13:26:29 GMT, Stacey Bella <stacey.bella@buckinghamshire.gov.uk> wrote:

Dear Mr Anwar,

During our previous conversation you have requested to amend the timings for licensable activities and opening hours for the above application as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
<i>The sale by retail of alcohol</i> <i>On the premises</i>	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00
<i>Recorded music</i> <i>Indoor</i>	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00
<i>Hours premises are open to the public</i>	Tuesday – Sunday 12:00-14:30 and 17:00 – 22:00

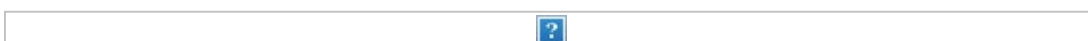
Please could you confirm by replying to this email that the timings stated above are correct and that you wish to amend your application to reflect the timings stated?

Kind Regards,

Stacey Bella
 Licensing Officer
 Commercial Licensing
 Directorate for Communities
 Buckinghamshire Council

01296 585336 or 01296 585605
stacey.bella@buckinghamshire.gov.uk or licensing@buckinghamshire.gov.uk

The Gateway, Gatehouse Road, Aylesbury, Bucks, HP19 8FF



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BUCKINGHAMSHIRE COUNCIL

MEMO

To: Licensing Services

From: Catriona Crelling

Tel Ext: 5875

Date 16.02.2024

Ref: PR202310-334574

Ref: PR202310-334574

Application for a New Premises Licence

Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT

I have reviewed this application and can confirm that having taken into consideration the promotion of the four licensing objectives, the Buckinghamshire Council Statement of Licensing Policy and the Secretary of State Section 182 Guidance the Licensing Authority have no objections.

Yours sincerely



Catriona Crelling
Senior Licensing Officer

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THE LICENSING ACT 2003 SECTION 5(3) CONSULTATION

LICENSING REFERENCE:		FOR ATTN: Licencing Team
PLANS NO:	Yes	
DATE RECEIVED:	01/02/2024	
PREMISES ADDRESS:	Unit 3, 64 High Street, Burnham SL1 7JT	
OUR REF. (FILE NO).	S4335	FSEC Cat. Licencing

SECTION A – THIS AUTHORITY DOES NOT WISH TO MAKE “RELEVANT REPRESENTATION” UNDER THE FOLLOWING SECTION OF THE ABOVE ACT

- Application for a premises licence under section 18(6) and 18(6)b**
- Variation of a premises licence under section 34 and or section 35(5) or 36(6)**
- Application for a club premises certificate under section 72(3)**
- Application for variation of a club premises certificate under section 85(3)**
-

THE GROUNDS FOR “RELEVANT REPRESENTATION” ARE: -

Despite two requests, the requested copy of the Fire Risk Assessment from the applicant has not been received. The absence of the FRA document does not qualify as a 'relevant representation'.

The applicant is to ensure the installation of adequate emergency lighting, as the submitted plans do not provide information on this aspect. Additionally, it is to be noted that the maximum occupancy for the restaurant area is 60 people.

Signature and Role of officer: Katie Kolb Date 29/02/24


Correspondence address: Buckinghamshire Fire & Rescue Service
Marlow Fire Station
Parkway, Marlow
SL7 1RA

Telephone Number	Office	01628 470640	Mobile	07919 057880
Email address	kkolb@bucksfire.gov.uk			

Prevention & Protection Policy Manager: Phill Mould

Buckinghamshire Fire and Rescue Service
Brigade Headquarters, Stocklake, Aylesbury, Bucks HP20 1BD
Tel: 01296 744400 Fax: 01296 435799

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	<p>ENVIRONMENTAL HEALTH Housing and Regulatory Services</p> <p>Directorate for Planning, Growth and Sustainability</p>
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CONSULTATION ON a PREMISES LICENCE APPLICATION

OUR REF: 24/00179/LIAPPL	DATE: 14 th February 2024
ADDRESS: Unit 3 Eton Place 64 High Street Burnham Buckinghamshire SL1 7JT	To: licensing@buckinghamshire.gov.uk From: alison.king@buckinghamshire.gov.uk

Environmental Health acknowledge receipt of the application for a Premises Licence and associated documents received from Buckinghamshire Councils Licensing Authority.

The application has been reviewed and Environmental Health have no comments to make or raise any objections in relation to the four licensing objectives.

With regards

Alison King B.Sc (Hons) REnvH MCIEH
 Environmental Health Practitioner
 Strategic Environmental Health

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Received: 28/02/2024

Name: Jo Reilly

Comments:

Public nuisance - planning permission was only granted (Application PL/22/1370/FA - see Case Officer Report 11/10/22) subject to the following: "only open between the hours of 08:00-22:00" due to the proximity of neighbours/ residential areas. This has been completely ignored by the applicant as they are requesting to serve alcohol until 22:30pm. Furthermore, they have blatantly been selling alcohol without a licence until now, despite being informed that it is illegal.

I have a young child therefore am also concerned about the protection of my child from harm given the proximity to our home and being able to live without undue noise and antisocial behaviour from the restaurant and its clientele.

I therefore urge you not to approve a premises licence, however if you do, request that you please only give permission until 10pm latest.

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From: [Jo Reilly](#)
To: [Stacey Bella](#)
Subject: [EXTERNAL] Re: LA2003 Application for a new premises licence - Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT
Date: 11 March 2024 11:09:12

You don't often get email from jo1reilly1@hotmail.com. [Learn why this is important](#)

Dear Stacey,

Thank you for your emails and for confirming the closing time change to 10pm, which is fantastic.

I am concerned, however, that they appear to have completely ignored your instructions that they are not allowed to serve alcohol without a licence as they have been doing so all last week. I have taken a couple of photos if of use, however as they have CCTV, I'm sure you will be able to see it on that if requested. I still have genuine concerns that they feel as though they are above the law and that they can do as they please, despite being informed otherwise.

Kind regards,

Jo Reilly

Sent from [Outlook for Android](#)

From: Stacey Bella <Stacey.Bella@buckinghamshire.gov.uk>
Sent: Friday, March 8, 2024 5:06:07 PM
To: jo1reilly1@hotmail.com <jo1reilly1@hotmail.com>
Subject: FW: LA2003 Application for a new premises licence - Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT

Dear Jo,

Further to my below email, I have been advised by the applicant that they wish to reduce the timings for licensable activities and opening hours on the application to finish at 10pm.

As below, I would be grateful if you could let me know if this addresses your concerns and whether you feel that a hearing is still necessary?

Kind Regards,

Stacey Bella

Licensing Officer
Commercial Licensing
Directorate for Communities
Buckinghamshire Council

01296 585336 or 01296 585605

Stacey.bella@buckinghamshire.gov.uk or licensing@buckinghamshire.gov.uk

The Gateway, Gatehouse Road, Aylesbury, Bucks, HP19 8FF

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APPENDIX 10

Appendix
Directorate for Communities
Transport and Regulatory Services
Licensing Team

Buckinghamshire Council
The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Mr Shahzad Anwar
Em Pho Ltd
Unit 3, Eton Place
64 High Street
Burnham
Slough
SL1 7JT

licensing@buckinghamshire.gov.uk
01296 585605
www.buckinghamshire.gov.uk

22 March 2024
Ref: PR202403-343145

Dear Mr Anwar,

Re: Licensing Act 2003
Em Pho, Unit 3, Eton Place, 64 High Street, Burnham, Slough, SL1 7JT
Breach of Section 136

The licensing unit has received a complaint from a member of the general public suggesting that licensable activities (the sale by retail of alcohol) have been carried out at the above premises without the authorisation to do so.

During my visit to the premises on 20 March 2024 you admitted to conducting the above activities, during the weekend of 16th – 17th March 2024, without the authorisation to do so. You were advised that this is a criminal offence as determined by the following:

Section 136 of the Licensing Act 2003 states:

(1) A person commits an offence if—

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be so carried on.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

This notice is a **formal warning** in relation to the unlicensed activities which have taken place from the above named premises. Following this warning, should evidence of further breaches of the Licensing Act be witnessed then further enforcement action shall be considered, including a prosecution under s136 of the Licensing Act.

During our discussion I also advised you that it is an offence to expose or keep alcohol for sale in circumstances where the sale of alcohol would be an unauthorised licensable activity. As such, you must ensure that alcohol is not offered for sale either by display at the premises or advertised on the menu.

Should you require further clarification or assistance with any of the above matters then please do not hesitate to contact me via Stacey.bella@buckinghamshire.gov.uk

Yours sincerely

A handwritten signature in black ink that reads "Stacey Bella". The signature is written in a cursive, flowing style.

Stacey Bella
Licensing Officer