

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: 74 Oxford Road, New Denham, Denham, Buckinghamshire, UB9 4DN
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Caroline Steven – Principal Licensing Officer
Report Author	Caroline Steven – Principal Licensing Officer
Ward/s Affected	Denham

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 Solomons Solicitors, North Office, 16 Finchley Road, London, NW8 6EB, on behalf of their client; Mr Ashok Kumar Selvaraj, 4 Rosary Close, Hounslow, Middlesex, TW3 4NS (“The Applicant”) in respect of 74 Oxford Road, New Denham, Denham, Buckinghamshire, UB9 4DN (“the premises”).

2. Background

2.1. The premises consist of a 17th Century Grade 2 listed building which has been extended over the years and is located to the north west of the A4020 Oxford Road in Denham. Historically the premises have been known as the Dog and Duck Pub, Turpins, Tiger Cubs and Maya, trading as either a public house or restaurant. Most recently, the premises was known as Soin Lounge a shisha lounge which opened in August 2020. A location plan showing the premises location is attached to this report marked **Appendix 1**. As shown on the location plan, the premises is located on a main road (Oxford Road A4020) and is in close proximity to a number of residential dwellings located directly opposite, neighbouring to one side and also diagonally behind the premises.

2.2. The premises previously benefited from a premises licence issued under the Licensing Act 2003 which was revoked by the Licensing sub-committee on 10th November 2020 following a review application and hearing. The application to review the premises licence was submitted by the Buckinghamshire Council Environmental Health department following an

extensive multi-agency investigation of the premises pursuant of evidence of non-compliance and significant concerns raised by local residents in relation to all of the licensing objectives.

2.3. The Council have previously issued a Temporary Stop Notice in respect of the unauthorised mixed use at the premises when it was operating as a restaurant and a shisha lounge, requiring the immediate cessation of the element of the mixed use comprising the shisha lounge.

2.4. The current applicant made a previous application in respect of these premises for a new Premises Licence in August 2021, in respect of which representations were received from five of the Responsible Authorities and 45 local residents. This application was withdrawn at a hearing of the Licensing Sub-Committee which took place on the 29th September 2021.

3. The Application

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

3.2. The licensable activities sought are as follows:

Proposed activity	Proposed hours
Supply of alcohol (On the premises only)	Monday - Sunday 12:00 – 23:00 Christmas Eve & New Year’s Eve 12:00 – 00:00
Live Music (Indoors only)	Friday - Saturday 20:00 – 23:00 Christmas Eve & New Year’s Eve 20:00 – 01:00
Recorded music (Indoors only)	Monday – Sunday 12:00 – 23:00 Christmas Eve & New Year’s Eve 12:00 – 00:00
Performance of dance (Indoors only)	Friday – Sunday 20:00 – 22:00
Late night refreshment (Indoors & outdoors)	Monday - Sunday 23:00 – 23:30
Opening Hours	Monday – Thursday 12:00 – 23:00 Friday – Sunday 12:00 – 00:00 Christmas Eve, New Year’s Eve and Boxing Day 12:00 – 01:00

* The Panel should note that the playing of recorded music and performance of live music are de-regulated between the hours 0800 and 2300 hours and therefore fall outside of the

jurisdiction of the Licensing Act 2003 unless subject to a Review application under section 51.

4. Relevant Representations

4.1. Responsible Authorities:

4.1.1. The Chief Officer of Police: Response received – the police have requested specific wording for a condition relating to an electronic entry recording system **Appendix 3**. The applicant has agreed to this condition.

4.1.2. The Licensing Authority: No response received

4.1.3. The Local Environmental Health Authority (Head of Environmental Health): Response received – representation in relation to public nuisance and crime and disorder. **Appendix 4**.

4.1.4. The relevant enforcing authority under the Health and Safety at Work etc Act 1974: Response received – representation in relation to public safety and crime and disorder, **Appendix 5**.

4.1.5. The Fire and Rescue Authority: No response received

4.1.6. The Local Planning Authority (Head of Sustainable Development): Response received but not within the 28 day consultation period.

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

4.1.8. The Safeguarding and Child Protection Unit: No response received.

4.1.9. The Primary Care Trust: No response received.

4.2. **Any other persons:** Fourteen objections were received during the 28 day consultation process, copies of which are attached at **Appendix 6**.

4.3. No letters of support were received.

5. Licensing Officer's Observations:

5.1. The Relevant Representations received raise the following issues:

5.2. The prevention of public nuisance

Residents living nearby have expressed significant concerns in their representations about the proposed opening hours of the premises and the likely noise from patrons both whilst on the premises and when leaving the premises, as well as noise from music and various other aspects associated with premises of this nature.

5.3. The prevention of crime and disorder

Objectors have outlined their concern and opposition to the granting of a licence for the proposed activities due to the anticipated anti-social behaviour and other related crime and disorder that has previously been experienced prior to the revocation of the previous premises licence. Residents provide details of incidents of alcohol and drug misuse as well as public order offences and violence being witnessed on a regular basis, all of which were attributed to the nature of the premises' use and lack of management control.

5.4. Public Safety

Similar to the representations in relation to the prevention of crime and disorder objective, many residents have raised concerns relating to feeling unsafe with the premises being operated for the use suggested and the potential for anti-social behaviour affecting residents late into the evening.

6. Policy Considerations

- 6.1. Regard must be given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to licence conditions (page 25) and the Council's approach to licensing hours (page 23).
- 6.2. In relation to licence conditions, the policy confirms that any conditions should be proportionate and appropriate to both the specific premises and the proposed activities. The applicant is responsible for demonstrating, through their operating schedule, how they intend to uphold the licensing objectives and prevent any harm, crime or disorder through the operation of their business.
- 6.3. In relation to nuisance, that Council's policy confirms at section 3.36 that much weight is placed on recommendations made by Environmental Health Officers. Particular issues referred to in this respect include the escape of noise from premises, the movement of patrons arriving at and departing from the premises and customer parking and its likely impact on local residents.
- 6.4. In making decisions in respect of permitted hours (section 3.11) the Licensing Authority will generally take a more stringent approach to licensing hours in areas of higher residential density where there is greater risk of public nuisance. Consideration will be given to representations made by residents in the vicinity of the premises as well as the applicant. It is also noted that premises with activities which attract younger customers are more likely to result in nuisance issues.
- 6.5. In relation to expected management standards, the policy specifies at section 3.14 that the Licensing Authority will take account, amongst other things, of the applicant's level of relevant knowledge and experience and their ability to follow expert advice and to run their business lawfully and in accordance with good business practice.
- 6.6. Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

In relation to Prevention of Public Nuisance the Statutory Guidance states:

- 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.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 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.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating

to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

- 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.

In relation to the Prevention of Crime and Disorder the Statutory Guidance states:

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

In relation to Public Safety the Statutory Guidance states:

- 2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

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 relation to local residents and businesses.

8. Resources, Risk and Other Implication

- 8.1. **Resource:** The only resource implications to date has been officer time. If the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee, however, 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.

Human Rights

- 8.2. The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents. Any decision taken must be appropriate and proportionate to the objective being pursued. In particular, the following should be taken onto consideration: Article 6 - the right to a fair hearing Article 8 - respect for private and family life Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence).
- 8.3. 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.
- 8.4. 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.
- 8.5. 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. 8.6 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

9.2. Regard must also be had to the Council's Statement of 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.

9.3. 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 proposed activities. 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.

9.4. 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.

9.5. The following options are available to the Licensing Sub Committee:

9.5.1. 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.

9.5.2. Exclude from the scope of the Premises Licence granted any of the requested licensable activities to which the application relates.

9.5.3. Refuse to specify a person in the Premises Licence as the premises supervisor.

9.5.4. Reject the whole of the Application.

9.5.5. Grant the Premises Licence subject to different conditions for different parts of the premises or for different /reduced licensable activities if it is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received.

9.6. 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 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee's decision.

10. Conditions

THE SCHEDULE

For the purposes of this schedule;

"the Act" means the Licensing Act 2003;

"Anti-Social Behaviour" has the meaning given in section 36 of the Anti-social Behaviour Act 2003;

"Disability" has the meaning given in section 1 of the Disability Discrimination Act 1995;

"Relevant Premises" has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

"Responsible Person" has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act (the relevant parts of which are attached to this licence).

Mandatory Condition - s19 of the Licensing Act 2003 - Supply of Alcohol

No supply of alcohol may be made under the premises licence:

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made authorised by a person who holds a personal licence

Mandatory Condition - s21 of the Licensing Act 2003 - Door Supervision

Where a condition of this licence requires one or more individuals to be present to carry out a security activity (as defined by the Private Security Industry Act 2001 as amended from time to time) must be licensed with the Security Industry Authority.

MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010 AS AMENDED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS)(AMENDMENT) ORDER 2014:

Mandatory Condition 1

(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

Mandatory Condition 2

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

Mandatory Condition 3

(1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or .
- (b) an ultraviolet feature.

Mandatory Condition 4

The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: " pint; .
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and .
- (iii) still wine in a glass: 125 ml; .

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and .

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

"An activity which is not prohibited by paragraph 1(2)(b) of the Schedule to the 2010 Order, as it was in force immediately before the coming into force of this Order, because it related to alcohol consumed at a table meal (as defined in section 159 of the 2003 Act), will continue not to be prohibited provided certain conditions are met; these are that the activity is available only to an individual who holds a ticket or other written invitation in respect of that activity which was purchased by, or given to, that individual on or before 30th September 2014, and the activity takes place on or before 5th April 2015."

MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2013 (MANDATORY CONDITIONS) ORDER 2014:

Mandatory Condition 5

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1—

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence—

- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4.—(1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

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Background Papers:	Application reference (21/01377/LAPRE) Licensing Act 2003, as amended Licensing Policy published 04 March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.