



PREMISES LICENCE APPLICATION

74 OXFORD ROAD

NEW DENHAM

REPRESENTATION MADE

BY THE RESPONSIBLE

AUTHORITY FOR POLLUTION CONTROL

21/001377/LAPRE

28th February 2022

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1. Introduction and Background

1.1 The author of this Representation is Andrew Godman, an *Authorised Person* of the Council as defined by Section 69(2)(d) of the Licensing Act 2003: '*...an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purpose of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health.*'

1.2 This Representation is made by the Council acting as a *Responsible authority* as defined by Section 69(4)(e) of the Licensing Act 2003: '*... the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health.*'

1.3 I am a Chartered Environmental Health Practitioner and have performed pollution control regulatory duties for local authorities since 1992. I hold a BSc. (Hons) in Environmental Health and a Post Graduate Diploma in Acoustics and Noise Control. I am a corporate member of both the Chartered Institute of Environmental Health and the Institute of Acoustics. I also provide advice on risk management matters to the Chief Constables of Hertfordshire and Cambridgeshire and also the Police and Crime Commissioners for those counties.

I have extensive experience of dealing with Environmental Health matters associated with 74 Oxford Road and have visited the premises on over 12 occasions since 2020. My last visit was on the 18th of February this year.

1.4 The structure formerly, and most recently, known as the Soin Lounge is a detached building situated at 74 Oxford Road, New Denham and is listed under Town & Country Planning Act 1990. Immediately adjacent to it is a car park used by its staff and patrons.

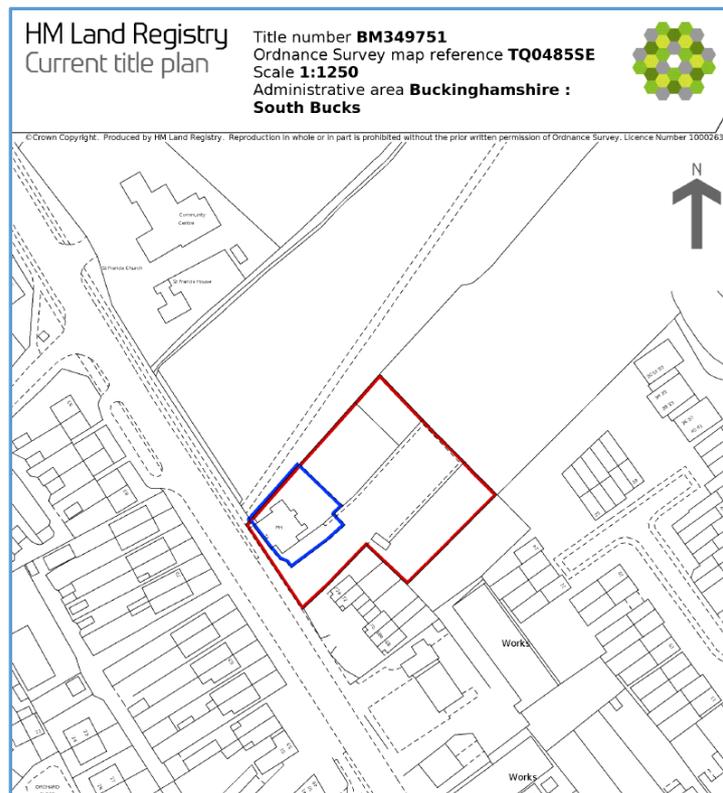
Map 1, over page, illustrates the location of 74 Oxford Road in the context of New Denham and Map 2 sets out the demise of 74 Oxford Road as recognised by the HM Land Registry.

Photograph 1 shows the front elevation of the 74 Oxford Road and also the entrance to the adjacent car park and Photograph 2A and 2B show the rear elevation of the building which is largely composed of large metal shutters. Photograph 3 is of the side entrance to the building which is via the adjacent car park.

Map 1: location of 74 Oxford Road, New Denham (marked as 'Maya Tandoori')



Map 2: the demise of 74 Oxford Road, New Denham (land within red line)



Photograph 1: the front/right elevation of the building at 74 Oxford Road and car park entrance



Photograph 2A: the rear elevation of the lounge area of 74 Oxford Road



Photograph 2B: the rear elevation of the lounge area of the building (as viewed from the interior)



Photograph 3: the side entrance the structure



1.5 Premises Licence 05/00319/LAPRE was issued by South Buckinghamshire District Council on 24th November 2005 in respect of 74 Oxford Road citing the trading name of 'Tiger Cubs'. This licence permitted the following activities:

- Sale by Retail of Alcohol
- Live Music (Indoors & Outdoors)
- Provision of facilities for dancing (Indoors & Outdoors)
- Late Night Refreshment (Indoors & Outdoors)

The typical permitted hours (the licence allowed later hours as regards Bank Holidays, etc.) for the above activities were as following:

- Monday - Thursday 12.00 – 24.00
- Friday - Saturday 12.00 – 02.00
- Sunday 12.00 – 24.00

The typical (again different hours were permitted as regards Bank Holidays, etc.) opening hours for the premises were restricted to:

- Monday - Thursday 09.00 – 24.30
- Friday - Saturday 09.00 – 02.30
- Sunday 09.00 – 24.30

In June 2020 this Premises Licence was transferred in to the name of the Soin Lounge (which point it became 09/00460/LAPRET) with essentially the same permitted activities and times as those contained within Premises Licence 05/00319/LAPRE.

This Premises Licence 09/00460/LAPRET was revoked by the Council on 4th of November 2020 following a Review sought by myself acting in the capacity of a Responsible Authority (see above). The Council's Licensing Panel concluded that it was fair and proportionate to revoke the premises licence to promote the licensing objectives of the prevention of public nuisance, public safety, and the prevention of crime and disorder.

1.6 The Council maintains records of all complaints made to it (or its predecessor for the area, South Buckinghamshire District Council) concerning environmental health matters since the late 1990s. Table 1, below, summarises the complaints received in connection with this premises up until February 2022:

Table 1: summary of complaints regarding 74 Oxford Road

Date	Reference	Description by complainant	Response summary
07/04/1998	98/00395/NPUB	Noise from Karaoke on Saturday evening	Not substantiated
27/07/1998	98/01506/NFOOD	Noise from Karaoke at the weekend	Substantiated and abatement notice served on premises
28/9/1998	98/02696/NPUB	Noise from karaoke and ladies night events	Not substantiated
29/06/1999	99/00936/NPUB	Noise nuisance Fridays and Saturdays until 1.30am	Not substantiated
30/06/1999	99/00949/NPUB	Noise on Thursday night	Not substantiated
20/12/1999	99/02240/NPUB	Loud music Fridays and Saturdays	Not substantiated
14/02/2000	00/00276/NPUB	General noise from premises	Not substantiated
07/08/2000	00/01868/NPUB	Noise from loud amplified music	Resolved by discussion with Mr Uddin
14/08/2000	00/02105/NPUB	Amplified music	Substantiated and abatement notice served on premises
05/04/2001	01/00646/NPUB	Noise from smashing bottles	Resolved by informal discussion with Mr Uddin
18/12/2001	01/02402/NPUB	Amplified music from marquee	Not substantiated
22/07/2002	02/01737/NPUB	Out of hours noise complaint (no details recorded)	Resolved by provision of advice
16/08/2004	02/02339/NDPART	Out of hours noise complaint (loud music from noisy party)	Substantiated and abatement notice served on premises (trading as Tiger Cubs)
05/09/2005	05/01515/NPUB	Loud music reported to out of hours by Thames Valley Police	Resolved by informal dialogue
27/06/2016	16/01666/NSMUS	Amplified music on Sundays	Resolved by informal dialogue
8/08/2020	20/01712/NSMUS	Entertainment noise from the premises Noise associated with patrons	Noise abatement notices served Noise making equipment seized Premises Licence revoked
18/2/2021	21/00346/ACCUM	Accumulation of refuse in car park	Resolved by informal dialogue
1/6/2021	21/01174/NSMUS	Playing of music in car park	Not substantiated

The shaded cells in Table 1 illustrate that this premises has been subject to four separate sets of enforcement notices as regarding noise nuisance.

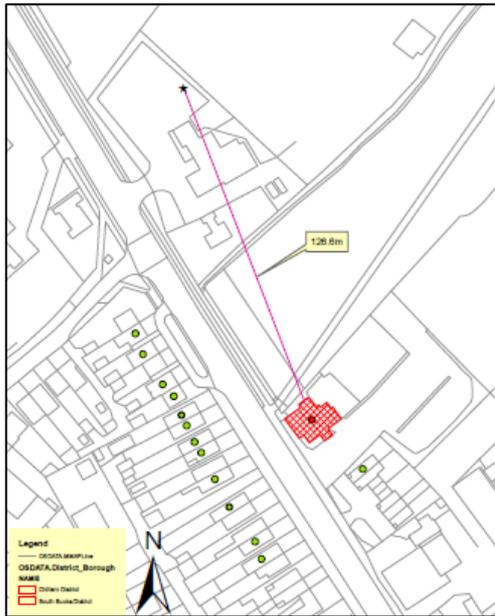
1.7 In the course of 2021 the Council received a number of applications for a Premises Licence in connection with 74 Oxford Road most of which were deemed by the Licencing Authority to be technically invalid. However, application 21/01377/LAPRE was deemed to meet the requirements of the Licensing Act 2003 and there it was forwarded to Responsible Authorities for review.

Following a review of the contents of this application and an external inspection of the premises (as permitted by a warrant granted to me in connection with the Environmental Protection Act 1990) I made a Representation on 26th January 2022 to the Licensing Authority recommending that a Premises Licence is not granted on the terms sought – see Appendix A.

Notwithstanding the above, I did state my willingness to enter into a constructive dialogue with the applicant with view to securing changes to the application so that licensing objectives were likely to be promoted in practice. In response to this, the Applicant’s legal presentative did contact me to arrange a site meeting with his client and made amendments to the application in light of my concerns set out in my Representation. These were emailed to be on 31st January 2022 – see Appendix B – and were forwarded to the Licensing Authority.

I visited 74 Oxford Road on 22nd of February 2022, as requested, and met the Applicant’s legal adviser, Mr Khan. Unfortunately, the applicant himself, Mr Selvaraj, was not in attendance. I explained my concerns regarding the premises in general, and the application in particular, over the course of the 90 minute meeting and suggested that Mr Selvaraj may wish to revisit the application with view to moderating further the scope of the licensable activity applied for and to reinforce the Operating Schedule conditions so that they are meaningful, practical, and clear. Mr Khan indicated that Mr Selvaraj would be in contact with me (and/or the Licensing Authority) shortly but no such communication has been received at the time of writing (28th February 2022).

During my enquiries concerning noise and other disturbance associated with the Soin Lounge (with essentially the same structure as the current building) music noise associated with regulated entertainment could be heard over 126 metres away thereby illustrating the potential physical scope of disturbance to the community – see Map 5 below:



Map 5: Illustration of distance between the façade of the building at 74 Oxford Road and the car park of the Saint Francis New Denham Community Centre – 126.6 m

Accordingly, the location of 74 Oxford Road, not only in terms of the building in which regulated entertainment is proposed to take place but also the car park from which patrons will leave, is far from ideal.

Whilst background noise levels in the area during the day (07:00 to 23:00) are relatively high due to road traffic, these levels fall significantly after 23:00 and therefore very limited masking of entertainment or patron noise arising from the premises.

2.2 The structure of the building and its resistance to the passage of sound

The main structure of 74 Oxford Road was constructed over 80 years ago and is a Grade II listed building (date of listing: 1985, reference 1124494). It is reasonable to assume that it was not designed or built with noise control in mind as amplified entertainment, such as music, was not a common existence at the time of its construction. At the Review hearing in November 2020 I did ask Mr Moyn Uddin, the Designed Premises Supervisor (DPS) and co-licence holder at that time who had a familiarity with the building spanning a period of over 20 years, about any noise control features of the building and he was unable to furnish the Panel with any such information. Again, it is reasonable to assume that the fabric of the building was not modified, post its original construction, to accommodate noise control measures linked to electronically amplified entertainment.

In 2020 an annex was added to the rear elevation of the main structure which was not in conformity with the Local Planning Authority's approved plan arising from application PL/19/1728/FA (*'Single storey covered canopy at rear and associated alterations to the rear façade of the listed building'*). The approved plans show that the rear elevation of the

extension was to have a solid continuous façade with windows rather than full span shutters that were *actually* installed – see Photograph 2A and 2B. This particular aspect of this unauthorised development materially degrades the performance of the lounge area from a noise control point of view. When open (even to a limited degree), this substantial structural opening would permit the unfettered emission of acoustic energy into the local environment.

The construction of the façade containing the main (side) entrance also departs from the approved plans as regards the wall/ceiling area: the façade above the main wall is of a very lightweight construction and immediately behind it is a void that directly communicates with the lounge area below where regulated entertainment is proposed to take place – see Photograph 5. The construction type used *significantly* weakens the noise insulation properties of this façade too.



Photograph 5: view of upper side façade construction as seen from rear of 74 Oxford Road

During my visit to the premises on 18th February 2022 I noted that the roof of the extension was part missing – see photograph 6. This, again, degrades the performance of the structure, from a noise control point view.



Photograph 6: view of ceiling/roof of extension as seen from within 74 Oxford Road (February 2022)

Beyond the profound physical inadequacies of the structure (in the context of controlling regulated entertainment noise) during my last inspection of the building there was no noise control technology employed at the premises to limit the emission of noise from the structure such as an electronic noise limiter fitted to the sound reproduction system or sensors attached to external doors, windows, or shutters that would curtail such entertainment when there were open. As I understand it, no such systems of control are currently installed.

3. Analysis of Compliance Risk

- 3.1 My Representation principally relates to the prevention of public nuisance licensing objective as set out in Section 4(2)(c) of the Licensing Act 2003. Guidance issued by the Secretary of State under Section 182 of the Act (dated April 2018) states that the use of the term public nuisance in the context of local authority licensing retains its broad common law meaning. In this case I have been guided by the Attorney-General v PYA Quarries 1957 judgement and, in particular, the comments of Lord Denning in that case:

“I prefer to look to the reason of the thing and to say that a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.”

The Licensing Act 2003 places a duty on the Licensing Authority to exercise its powers with a view to promoting the licensing objectives, one of which relates to the prevention of public nuisance(s).

In considering this application, I have used a compliance risk assessment methodology that seeks to initially establish the gross (i.e. unmitigated) risk of the creation of a public nuisance associated with the proposed licensable activity, and secondly to assess the effectiveness of any proposed control measures to arrive at an assessment of the net, overall, risk of compliance with the above statutory objective.

The gross risk of non-compliance is high for the reasons cited in sections 2.1 and 2.2 of this Representation in the context of the proposed Operating Schedule, i.e. regulated entertainment in to the evening throughout the week in a structure that was very unlikely to have been designed or built to contain elevated noise levels. This structure has a particularly inadequate rear annex (in terms of its resistance to the passage of noise) where the regulated entertainment is proposed to take place. All of this would be important in any application, but it is made all the more critical given the close proximity of 74 Oxford Road to dwelling houses, the number of which easily meets the test set out in the Attorney-General v PYA Quarries 1957 judgement, above.

I now turn to the control measures set out in Section M of the proposed Operating Schedule (together with amendments supplied by the applicant’s legal adviser on 31st January 2022). A number of these controls are simply a broad reiteration of the *prevention of public nuisance licencing objective* and therefore lack precision as to how they will be employed in practice. The majority of the remaining proposed measures are vague and do not permit their direct translation into clear and enforceable licence conditions that reflect the *Crawley Borough Council v Attenborough 2006* judgement and consequently, in my view, amount to a set of unreliable control measures in their current form.

Accordingly, the net risk of non-achievement of the prevention of public nuisance licensing objective remains very high in my opinion.

4. Conclusion and Recommendations to the Licensing Panel

I believe that the evidence provided within this Representation demonstrates that the current construction of the building at 74 Oxford Road, its orientation, and the spatial proximity (including associated car park) to residential properties makes the practical achievement of the *prevention of public nuisance* licensing objective very challenging. In particular, the practical control of noise associated with patrons when they leave 74 Oxford Road is an additional difficulty given that it will, according to the proposed Operating Schedule, occur a) after 23:00, b) in the open air, and c) when background noise levels are typically low.

I particularly wish to draw the Licensing Panel's attention to the history of regulatory activity associated with noise nuisances arising from 74 Oxford Road: it has been cited in four sets of noise abatement notices (none of them were subject to an appeal) illustrating the fundamental unsuitability of this premises for licensable activity at night.

The application, as it stands, does not promote the prevention of public nuisance licensing objective in my opinion. Whilst it is clearly a matter for the Panel to determine this matter, I would nonetheless respectfully invite it to refuse this application in this instance.

Signature of Officer	
Capacity	Environmental Health Officer
Date	28 th February 2022

APPENDIX A: INITIAL REPRESENTATION AGAINST GRANT OF PREMISES LICENCE



Directorate for Planning, Growth and Sustainability

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Licensing Authority CSB Area
Buckinghamshire Council
Amersham
Buckinghamshire
HP6 5AW

Dealt with by: Andrew Godman
Direct Line: 01494 732934
Your Ref: 21/01377/LAPRE
Date: 26th January 2022
Our Ref: 22/00066/LIAPPL
Email: Andrew.Godman@Buckinghamshire.gov.uk

----- BY EMAIL -----

Dear sir/madam

Licensing Act 2003

Re: Premises Licence application – 74 Oxford Road, Denham, Buckinghamshire

I acknowledge safe receipt of the Premises Licence application documentation (including proposed Operating Schedule) as regards the above premises.

I am an authorised officer of the Council as set out in Section 69(2)(d) of the Licensing Act 2003. I fulfil the duties of a Responsible Authority as defined by Section 69(4)(e) of the Act in terms of the Council's statutory functions associated with the minimisation or prevention of risks associated with pollution to the environment or harm to human health.

I have reviewed the proposed Operating Schedule in the context of what steps, if any, are appropriate for the promotion of the licensing objectives as described in Section 4 of the Licensing Act 2003 and wish to make a **Representation against the granting of a Premises Licence at this time.**

The proposed Operating Schedule identifies, *inter alia*, the provision of regulated entertainment and the provision of late night refreshment which, if inadequately unmitigated, would not in my opinion promote the *prevention of public nuisance* licensing objective.

Inadequacy of the mitigation cited in the proposed Operating Schedule

Many of the steps cited in Section M of the application (the proposed Operating Schedule) are necessary and, in principle, go *some way* to securing the prevention of public nuisance licensing objective as stated in the Act. However, the current wording of these control measures falls some significant way short of amounting to clear and enforceable licence conditions that reflect the *Crawley Borough Council v Attenborough 2006* judgement. Whilst some limited rewording might

be within the powers of officers of the Licensing Authority having regard to Section 18(2)(a) of the Licensing Act 2003, they are likely to remain a set of incomplete and, in some instances, *unreliable* control measures.

Additional steps and other control measures necessary to promote the Licensing Objectives

Notwithstanding my comments, above, the application documentation does not contain *all* of the steps that I believe are necessary in order to promote the prevention of public nuisance licensing objective *in practice*. Specifically, the provision of regulated entertainment and the trading hours of the premises as set out in the proposed Operating Schedule give me considerable cause for concern due to the following:

- The proximity of the premises (including patron car park) to dwelling houses
- The inadequate fabric of the structure of 74 Oxford Road in the context of noise control
- Trading of the premises during accepted sleeping hours (i.e. 23:00 to 07:00)
- The inadequacy of managerial control measures as demonstrated by similar trading activity (i.e. the provision of shisha) in 2020

Accordingly, I see the following additional measures as being necessary and proportionate in this instance:

- Closure of the premises to the public no later than 23:00
- The exclusion of all regulated entertainment
- The exclusion of late night refreshment
- The clearance of the adjacent car park of all patrons by no later than 23:30
- Regular perimeter noise monitoring and associated record keeping
- The effective management of noise from persons queuing to enter the premises
- The effective management of noise from patrons leaving the premises
- The effective management of noise associated with commercial waste
- The effective management of litter in the vicinity of the premises
- The effective management of patron car parking in the vicinity of the premises

The way forward

I have provided a copy of this document to Mr Selvaraj, the applicant, so that he may contact me to discuss my concerns with view to arriving at a mutually agreeable revised Operating Schedule. If, however, no such agreement is reached then I am mindful that this matter will be subject to formal determined by a full Licensing Sub-committee of the Council where I will be permitted to expand on my comments above.

Yours faithfully,



Andrew Godman
Environmental Health Officer

cc Mr A K Selvaraj (Applicant)

APPENDIX B: PROPOSED MODIFICATIONS TO THE APPLICATION -

From: information <info@solomonssolicitors.co.uk>
Sent: 31 January 2022 08:04
To: Andrew Godman <Andrew.Godman@buckinghamshire.gov.uk>
Subject: [EXTERNAL] 74 Oxford Road

Dear Mr Godman

Further to conversations today we can confirm the following.

Our client is content with the closure of the premises to the public no later than 23:00 Sunday to Thursday with the closing hours on Friday and Saturday being 00.00.

Regulated entertainment being light background music and no DJ.

The late night refreshment licence being until 23.30 only on Fridays and Saturdays.

The clearance of the adjacent car park of all patrons by no later than 23:30.

Regular perimeter noise monitoring and associated record keeping.

The effective management of noise from persons queueing there will be no individuals queueing at all.

The effective management of noise from patrons leaving the premises.

The effective management of noise associated with commercial waste.

The effective management of litter in the vicinity of the premises.

The effective management of patron car parking in the vicinity of the premises

We are content with the above conditions to be added to the licence.

We are grateful for your concerns and look forward to meeting you and your colleagues on site on Friday 18th February 2022 at 2.30pm.

Kind Regards
Solomon's Solicitors