

<b>SUBJECT:</b>	<b>APPLICATION FOR A PREMISES LICENCE at: 11 Hill Avenue, Amersham, Buckinghamshire, HP6 5BD</b>
<b>REPORT OF:</b>	<b>Application under section 17, Licensing Act 2003</b>
<b>Responsible Officer</b>	<b>Stacey Bella – Licensing Officer</b>
<b>Report Author</b>	<b>Stacey Bella – Licensing Officer</b>
<b>Ward/s Affected</b>	<b>Amersham and Chesham Bois</b>

### 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 Luljeta Semanaj (“the applicant”) in respect of 11 Hill Avenue, Amersham, HP6 5BD (“the premises”).

### 2. Background

2.1 The site consists of the ground floor unit of a 3 story building, with proposed outside seating at the front and is located on Hill Avenue in the Town Centre of Amersham. The site is located to the south of Hill Avenue, close to the train station.

2.2 The buildings on Hill Avenue consist of mainly commercial premises at ground level with residential dwellings above. The site has previously been open as a retail premises.

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

The layout plans are attached as **Appendix 2**.

### 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 is attached to this report marked **Appendix 3**.

### 3.2 The licensable activities sought are as follows:

Proposed activity	Proposed hours
<b>Sale of Alcohol</b> (Both on and off the premises)	Monday - Thursday 1200 – 2300 Friday – Saturday 1200 – 2330 Sunday 1200 – 2230  <b>Non standard timings:</b> New Years Eve from the end of normal permitted hours to 01:00 New Years Day
<b>Recorded Music*</b> (Indoors only)	Everyday 1000 - 2200
<b>Other entertainment of a similar description to live music, recorded music or performances of Dance</b> (Indoors only)	Everyday 1000 - 2200
<b>Late Night Refreshment</b> (Both indoors and outdoors)	Friday – Saturday 2300 – 2330  <b>Non standard timings:</b> New Years Eve from the end of normal permitted hours to 01:00 New Years Day
<b>Opening Hours</b>	Monday – Thursday 0700 – 2300 Friday – Saturday 0700 – 2330 Sunday 0900 – 2300  <b>Non standard timings:</b> New Years Eve from the end of normal permitted hours to 01:00 New Years Day

\* The Panel should note that the playing of recorded music is 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: No objections

- 4.1.2 **The Fire and Rescue Authority:** Response received: No objections
- 4.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received
- 4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** Response received: No objections
- 4.1.5 **Weights and Measures Authority (Trading Standards Officer):** No response received.
- 4.1.6 **The Safeguarding and Child Protection Unit:** No response received
- 4.1.6 **The Licensing Authority:** No response received
- 4.2 Any other persons: objections were received from 4 other parties during the 28 day consultation period. Copies of the representations are attached to the report marked as **Appendix 4.**
- 4.3 No letters of support were received.
- 4.4 The Relevant Representations received mainly raise the following issues:
- The Prevention of Public Nuisance and Public Safety
- Residents living nearby have expressed concern in their representations about the opening and licensable activity hours and the likely noise from customers both whilst on the premises, including those in the outside area at the front of the premises, as well as when arriving or leaving. There are also concerns regarding the noise from music.
- Residents have expressed their concerns regarding the proposal to have outside seating on the pavement to the front of the premises. There are concerns that this could create difficulty accessing the entrance to the residential part of the building and lead to customers congregating at the front of the premises and blocking the pavement.
- 4.5 On reviewing the relevant representations, the applicant submitted further additions to the Operating Schedule for consideration by the Panel at this hearing. The additional conditions can be seen in section 9 of this report.
- 4.6 The agreement from the Applicant to the wording of these conditions can be viewed in **Appendix 5**
- 4.7 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the applicants operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties.

## **5. Relevant Policy Considerations:**

- 5.1 Regard must be given to the Council's Statement of Licensing Policy (published 04 March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to licence conditions, the Council's approach to licensing hours and outside areas.
- 5.2 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.
- 5.3 In relation to nuisance, that Council's policy confirms at section 3.36 that 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 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 the use of outside areas.
- 5.4 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.
- 5.5 In relation to the use of outside areas, the policy at section 3.37 supports the use of such areas as gardens and forecourts, providing robust management controls are in place to prevent public nuisance. Control measures include adequate supervision, regular glass collections and specified hours of use. Operators are encouraged to consider adopting the Council's standard conditions for pavement licences, shown in the Council's schedule of model conditions.
- 5.6 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. 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.
- 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. 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.

## **7. Resources, Risk and Other Implications**

- 7.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeal 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.

### **Human Rights:**

- 7.2. 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 into 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).
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6 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.

## **8. Determination by the Licensing Sub-Committee**

- 8.1 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.

- 8.2 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.

- 8.3 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.
- 8.4 The following options are available to the Licensing Sub Committee in determining the application:
  - 8.4.1. 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.
  - 8.4.3. Reject the whole of the Application
  - 8.4.4. 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.
- 8.5 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 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

## **9. Conditions**

### **9.1 Mandatory Conditions**

#### **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 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

## **MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2003 (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.

## 9.2 Proposed conditions

1. The premises licence holder shall ensure that a digital CCTV system shall be installed at the premises and maintained in good working order.
2. A log of all refusals to sell alcohol shall be maintained at the premises. The register shall be retained for inspection at the premises whilst it is open for licensable activities for a period of no less than 6 months from the date of the last entry in the register being made.
3. An incident log shall be kept at the premises and made available on request to an authorised officer of Buckinghamshire Council or Thames Valley Police. It must be completed within 24 hours of the incident and will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder<sup>10</sup>
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system, searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
4. Appropriate fire extinguishers will be installed at appropriate parts of the premises.
5. An integrated fire alarm system will be installed at the premises.
6. 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
7. Soundproofing will be in place ensuring that no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a noise nuisance, as determined by the local authority Env. Health Officers
  8. The premises will have air conditioning.
  9. A Challenge 25 scheme shall be maintained at all times requiring the staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to buy alcohol provides valid photographic identification such as driving licence, passport proving that the customer is at least 18 years old.
  10. All staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons and the challenge 25 scheme in operation. A record of such training shall be kept/be accessible at the premises at all times and be made immediately available for inspection to council or police officers on request.
  11. Clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating that a Challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and acceptable forms of id. Such signages shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale
  12. The number of people using the outdoor area will be restricted to the number of seats available.
  13. There shall not be any outdoor seating at the rear of the premises
  14. The provision of any outside entertainment shall not cause a disturbance to nearby residents.
  15. The licence holder shall have a system in place to regularly monitor the use of outside areas by customers to ensure nearby residents are not disturbed by customer noise and the area is kept clear of litter.
  16. Outside lighting shall not cause a disturbance to nearby residents.
  17. Suitable waste receptacles shall be made available for use by staff and customers.
  18. The outside area shall be thoroughly cleaned at the end of each day that it is in use.

**Informative/s -**

<b>Officer Contact:</b>	<b>Stacey Bella (01296 585 336)</b>  <b>stacey.bella@buckinghamshire.gov.uk</b>
<b>Background Papers:</b>	<b>Application Ref 22/00477/LAPRE</b> <b>Licensing Act 2003, as amended</b> <b>Licensing Policy – As adopted March 2022.</b> <b>Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.</b>