

SUBJECT:	APPLICATION FOR THE REVIEW OF A PREMISES LICENCE at: Soin Lounge, 74 Oxford Road, Denham, Uxbridge, UB9 4DN
REPORT OF:	Application under section 51, Licensing Act 2003
Responsible Officer	Caroline Steven – Licensing Team Leader
Report Author	Caroline Steven – Licensing Team Leader
Ward/s Affected	Denham

1. Purpose of Report

To provide Members with information to enable the determination of an application for the review of a Premises Licence, in respect of which further relevant representations have also been received. The review Application has been submitted by Andrew Godman on behalf of Environmental Services, Buckinghamshire Council, Chiltern and South Bucks areas (“the applicant”), in respect of The Soin Lounge, 74 Oxford Road, Denham, Uxbridge, 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. The premises have previously been known as the Dog and Duck Pub, Turpins and Tiger Cubs, trading as either a public house or restaurant.
- 2.2 The current nature of the business is best described as a shisha lounge which opened on or around the 1 August 2020. The premises licence has not been transferred since 2009 and remains in the joint names of Moyn Uddin and Abdul Kahir Ujjal.
- 2.3 Complaints were first received from residents in early August 2020 and related to loud noise (from loud music, customers and vehicles), anti-social behaviour (customers urinating in the street and revving car engines), crime (use of illegal drugs, violence) and

public safety (dangerous driving by customers and a lack of social distancing) both on the premises and caused by customers from the premises in the immediate locality.

- 2.4 At approximately 23:15 on the 18 September 2020 licensing officers visited the premises to carry out an audit of the conditions of the licence and to confirm whether recorded music was being played above background levels. The police officers due to accompany the officers were unable to attend and so the area was observed from outside the premises. A large crowd of people were witnessed in the car park area who did not appear to be following social distancing guidelines. Recorded music was audible at the nearest residential premises and loud voices could be heard emanating from within the premises. One of the external windows was open in breach of the conditions of the licence.
- 2.5 At 16:00 on the 25 September 2020 licensing officers returned to the premises to carry out an audit of the licence conditions. Officers from the Environmental Health (EH) team for the Chiltern and South Bucks areas were also in attendance, as were officers from Thames Valley Police. The officers were initially refused entry to the premises despite confirmation to the management of the premises that one of the EH officers was in the process of executing a warrant which permitted him both entry to the premises and also to seize items. After a delay of approximately 10 minutes the officers were permitted entrance.
- 2.6 Inside the premises licensing officers spoke to Guarav Soin who confirmed that he was in management control of the premises. He was asked to provide a copy of his licence which he provided and which was pinned to a wall within the building. He was taken through the conditions on the licence and it became apparent that he was not aware that there were conditions attached to the licence.
- 2.7 It also became apparent that a number of the conditions were not being complied with and this was pointed out to Mr Soin. It was confirmed to Mr Soin that offences would be committed if any licensable activities (including any retail sale of alcohol or keeping any alcohol on the premises) were carried when any of the conditions were not being complied with.
- 2.8 Following this visit to the premises further information was provided by the Council's Planning Authority where it became apparent that significant structural changes had been made to the premises and that no application had been made to vary the premises licence or for a new premises licence. As a result of this the premises licence in force was not deemed to be effective as the premises plan which forms part of the licence could not be complied with.
- 2.9 As a result of this, a letter was sent to the premises licence holders on the 9 October 2020 providing details of the breaches witnessed on the 25 September 2020 and confirming that their premises licence was not effective due to the structural changes to the premises. The letter confirmed that due to the significant nature of both the structural changes and the nature of the business, it was the opinion of the licensing authority that, unless the building was returned to its previous state, a new premises licence would be required. The letter also confirmed that offences would be committed by any person carrying on or attempting to carry on a licensable activity in the absence of a valid authorisation.

- 2.10 This letter was sent by first class post to both licence holders, by e-mail to an address used by Moyn Uddin, to the solicitor representing Moyn Uddin and also hand delivered to the premises for the attention of Guarav Soin. The solicitors representing Moyn Uddin also confirmed that their client had been made aware of the contents of the letter. A copy of the letter is at Appendix 9.
- 2.11 On the 14 October e-mail confirmation was received from Sgt Rachel Dale that four further complaints regarding a lack of social distancing at the premises had been received by Thames Valley Police during the previous weekend. These complaints further stated that there were a large number of people on the premises and that 2 of the complaints related to issues after 22:00, being the new required closure time for licensed premises.
- 2.12 As a result of this information Sgt Dale arranged to visit the premises again on the 16 October 2020 and was accompanied by Andrew Godman. An email was received from Sgt Dale on the 18 October 2020 confirming that they had visited the premises on the 16 as planned and that she had witnessed smoking in the premises and that alcohol was being sold to customers by staff at the premises. Sgt Dale also confirmed that she spoke to Guarav Soin during the visit but he claimed to have no knowledge of the letter or that the premises licence was not effective.
- 2.13 On the 19 October an email was received from Andrew Godman confirming his findings from their visit of the 16 October 2020, which included a transcript from his notebook which confirmed that he had originally been refused entry to the premises but had been allowed to enter after a delay of a few minutes. He confirmed the information received in Sgt Dale's e-mail regarding smoking and alcohol sales and also that there was a lack of social distancing in the premises. From the information provided, it would appear that offences were continuing to be committed in relation to the

A copy of the current Premises Licence is attached to this report marked **Appendix 1**.

A location plan showing the premises location is attached to this report marked **Appendix 2**.

3. The Application

3.1 This application is for a review of the Premises Licence on the grounds of the prevention of public nuisance and the prevention of crime and disorder. A copy of the review application is attached to this Report marked **Appendix 3**.

3.2 The current permitted licensable activities are as follows:

<u>Licensable activity</u>	<u>Standard days and timings</u>
<i>Supply of alcohol Performance of Live Music</i>	Sunday to Thursday 12:00 - 00:00
	Friday to Saturday 12:00 - 02:00
<i>Late Nigh Refreshment</i>	Sunday to Thursday 23:00 - 00:00
	Friday to Saturday 23:00 - 02:00

<i>Hours premises are open to the public</i>	Sunday to Thursday 09:00 - 00:30 Fridays to Saturdays 09:00 - 02:30
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4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Response received in relation to reports of anti-social behaviour and crime (**Appendix 4**)

4.1.2 **The Fire and Rescue Authority:** No Response received: No comment

4.1.3 **The Local Planning Authority (Head of Sustainable Development):** Response received: Investigations are ongoing into an apparent breach of planning consent and breach of a Temporary Stop Notice (**Appendix 5**)

4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** Response received: Review application received from Andrew Godwin in relation to noise nuisance (**Appendix 6**)

Response received: Representation received from Nick Phillips in relation to breaches of smoking legislation (**Appendix 7**)

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

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

4.1.7 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** Fifteen representations were received in support of the review application during the 28 day consultation process which ended on 8 October 2020, copies of which are attached marked **Appendix 8**. The issues raised within the representations relate to; the prevention of public nuisance, the prevention of crime and disorder and public safety.

4.3 No letters of support were received.

5. Relevant Policy Considerations:

5.1 The Relevant Representations received raise the follows issues:

- Public Safety
Public Safety concerns are mentioned in several of the objections relating to breaches of the Covid-19 Regulations relating to social distancing and vehicles being driven in a dangerous manner by customers from the premises. There are references to parking

and other highway concerns, in addition to the safety of young females who live in the area.

- The Prevention of Public Nuisance

Representations mention concerns regarding ongoing noise nuisance and anti-social behaviour occurring on and from the premises.

Residents living nearby have expressed concerns that since the reopening of the premises there has been a significant increase in noise nuisance from loud music and noise from patrons both at the premises and when leaving the premises late at night. A number of noise recordings and videos have been submitted in this respect.

- The Prevention of Crime and Disorder

Representations mention the use of illegal drugs on the premises, breaches of smoking legislation, breaches of planning legislation, breached of Covid-19 legislation, public urination, drink driving by customers from the premises, the possible sighting of a firearm on the premises, allegations of assaults by door staff and other threats of violence.

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.

In relation to a Review of a Premises Licence the Statutory Guidance states:

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;

- revoke the licence.

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

In relation to the relevant licensing objectives and the determination of applications, the Council's Statement of Licensing policy states:

1.6 This Policy and the Council's functions as Licensing Authority seek to achieve control of premises, qualifying clubs and temporary events within the terms of the Act. Terms and conditions will focus on achieving the licensing objectives with reference to

- matters within the control of individual licensees

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- the specific premises and the places used
 - the direct impact of the activity taking place at the licensed premises, in particular on public who live, work and carry out normal activity in the area concerned.
- 1.8 The objective of the licensing process is to allow the carrying on of retail sales of alcohol and the provision of regulated entertainment in a way which ensures compliance with the Act, public safety and which is neither to the detriment of residents, nor gives rise to loss of amenity. It is the Council's wish to facilitate well-run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 2.8 In considering licence applications where representations have been received, the Licensing Sub-Committee will consider the adequacy of measures proposed to deal with the potential for nuisance and/or crime and public disorder, prevention of harm to children and public safety having regard to all the circumstances of the case. The Council will expect operating schedules to satisfactorily address these issues from the design through to the daily operation of the business. Particular consideration will be given to:
- The steps the applicant has taken or proposes to take to prevent public nuisance. Such steps may include the installation of sound proofing, air conditioning, acoustic lobbies, sound limitation devices, parking provision, notices at exits and in the car park.
 - Whether other measures to prevent nuisance and secure public safety have been taken, such as the use of CCTV, the employment of registered door supervisors, participation in a Pub Watch Scheme, the operation of a Safe Transport Home Scheme, staff training, means of access/exit, and types of drinking utensils used i.e. glass, plastic, no bottles.
 - The measures proposed to prevent the consumption or supply of illegal drugs including any search procedures and entry policies.
 - The likelihood of any violence, public disorder or policing problems arising if a licence were to be granted.
 - Previous history of compliance and any enforcement action arising from non-compliance.
- 2.9 The weight to be attached to individual representations will be determined by the Members at any hearing and will vary on a case by case basis taking the matters referred to in the Policy into account - representations are encouraged to be specific to the subject premises and if possible supported by written records of previous complaints/problems where these are alleged (including dates, times and to whom the complaint was made and when and what the outcome of any such complaint was if any) – equally applicants are encouraged in completing their operating schedules to detail steps proposed to address potential concerns.
- 4.1 In making decisions that relate to the hours for which a premises is licensed or any conditions as to delivery times etc. consideration will be given to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. Each case where relevant representations are received will be decided on its individual merits.

5. Resources, Risk and Other Implications

- 5.1 **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.
- 5.2 **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.
- 5.3 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.
- 5.4 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.
- 5.5 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 can not be interfered with.
- 5.6 Therefore if Members revoke or restrict the Premises Licence in whole or part this will be a breach of the rights of the Applicant unless such revocation or restriction (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 revocation or 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.

- 5.7 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.
- 5.8 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.

6. Determination by the Licensing Sub-Committee

- 6.1 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.

- 6.2 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.
- 6.3 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.
- 6.4 The following options are available to the Licensing Sub Committee in determining the review application:
- modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence;
 - take no further action or take informal action
- 6.5 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

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and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

Informative/s -

Officer Contact:	Caroline Steven (01494 421 222) – email address: caroline.steven@buckinghamshire.gov.uk
Background Papers:	Application Ref 09/00460/LAPRET Licensing Act 2003, as amended Licensing Policy – South Bucks Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.

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