

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Riwaz Restaurant, 41 Aylesbury End, Beaconsfield, Buckinghamshire HP9 1LU
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Martyn Bruver – Licensing Officer; martyn.bruver@buckinghamshire.gov.uk
Report Author	Martyn Bruver – Licensing Officer
Ward Affected	Beaconsfield

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 Rang Mahal Limited (“the applicant”) by his Licensing Agent, Mr Robert Jordan, in respect of Riwaz Restaurant, 41 Aylesbury End, Beaconsfield, Buckinghamshire HP9 1LU (“the premises”).

2. Background

The premises are situated on the western side of Aylesbury End in the town of Beaconsfield within the Beaconsfield Conservation Area. The premises are not located within a cumulative impact policy area. The premises has a large rear garden area and is in close proximity to a number of residential properties. The premises and adjoining premises are Grade II listed buildings.

A premises licence was previously granted in relation to these premises and remained in force from 18th February 2013 to 17th July 2020 when the company holding this licence, Azzurri Restaurants Limited, went into administration. Prior to this time the premises had been the Old Hare Public House and the origins of the pub date back to the 16th century.

The most recent use of the premises under this licence was a restaurant trading under the name of Zizzi. The previous trading hours were

- Monday to Saturday 12.00 to 00.30

- Sunday 10.00 to 00.00
- New Year's Eve 00.00 to 12.30

There were also seasonal exemptions at Easter and Christmas where the premises could remain open until 00.00.

The licensing section have received no complaints in relation to the premises during the last ten years.

Due to the fact that the previous licence lapsed in July 2020 the applicant now needs to apply for a new licence as opposed to being able to transfer the previous licence. The current application proposes the use of the premises as a fine dining Indian restaurant with the proposed licensed area located mainly on the ground floor with an additional smaller area located on the first floor which is described on the licensing plan as a dining room.

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

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 2**.

3.2 The licensable activities originally sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
<i>Supply of alcohol</i> <i>(Both on & off the premises)</i>	Monday to Saturday 10.00 to 00:00 Sunday 12:00 – 23.30
<i>Seasonal exception</i>	New Year's Eve 23:00 to 05:00 the following day
<i>Late night refreshment</i>	Monday to Saturday 23:00 to 00:00 Sunday 23:00 to 23:30
<i>Hours premises are open to the public</i>	Monday to Saturday 10.00 to 00:00 Sunday - 12:00 – 23.30
<i>Seasonal exception</i>	New Year's Eve 23:00 to 05:00 the following day

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Response received: no objection

4.1.2 **The Licensing Authority:** No objection

- 4.1.3 **The Fire and Rescue Authority:** Response received: comment made - no objection
- 4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received: No Comment
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** Response received: No objection - comment made
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received. No comment
- 4.1.7 **The Safeguarding and Child Protection Unit:** No response received. No comment
- 4.1.8 **The Primary Care Trust:** No response received. No comment
- 4.1.9 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** Twenty-one (21) objections including one from the local resident's committee were received during the 28-day consultation process which ended on 20th November 2020. A copy of these are attached marked **Appendix 3**.

4.3 No letters of support were received.

5. **Licensing Officer's Observations:**

5.1 The Relevant Representations received raise the follows issues:

The prevention of public nuisance

Residents living nearby have expressed a number of concerns in their representations. Some have mentioned that they have lived in the Beaconsfield Conservation Area for many years and the restaurant is in close proximity to their homes.

The proposed closure time of 05.00 on New Year's Eve is mentioned in several resident objections and also the use of the garden after 22:00 given the proximity to nearby houses. Residents have suggested that access to the garden after 22:00 should be restricted to staff and not used for smoking. Experience of noise generated in the garden by the previous restaurant owners was also mentioned. Residents also object to a proposed outside bar area which is described but not shown on the licensing plan. **Plan attached at Appendix 4.**

Extraction is also mentioned as being a potential cause of noise and odour, the adjacent restaurant was cited as an example of noise. Potential kitchen odours are also referred to.

Delivery times and methods are also mentioned. Reference is made to deliveries being received at the front of the property and the potential for sleep disturbance. Times

proposed by objectors indicate there should be delivery restrictions from 20:00 to 08:00.

The times of commercial rubbish deposits/collections, particularly in relation to bottles, is mentioned in several objections. It is suggested that rubbish collection for this restaurant is unique in Aylesbury End. The bin store is located at the rear of the restaurant garden and residents have asked that it is only used between the hours of 08:00 to 20:00, Monday to Friday, 09:00 to 18:00 Saturday and 10:00-18:00 on Sunday, particularly as bottles being added to bins can be noisy.

Rubbish bins are emptied using access in the residential road of Old Town Close. This means that large lorries must reverse into Old Town Close from Aylesbury End due to the limited turning circle, residents have requested that commercial rubbish removal be restricted to certain times and have proposed between 08:00 to 18:00.

Parking nuisance is mentioned in several objections and an anticipated increase in staff from the previous operation. It is suggested that take-away delivery drivers will cause a parking nuisance whilst waiting for deliveries to be collected.

- 5.2 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider the amended conditions proposed by the applicant and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made. These conditions were offered by the applicant's agent on 4th December 2020 and are attached at **Appendix 5**.
- 5.3 The Licensing Sub-Committee should also consider the reduction in hours offered by the applicant which vary from those submitted in the operating schedule. The new hours that have been offered are:
 - The terminal hour for licensable activity shall be 23:30 hours except for seasonal variations
 - On New Year's Eve all licensable activity shall cease at 02:00 hours the following day
 - All patrons shall leave the premises by 02:30 hours New Year's Day
- 5.4 During the course of the application, negotiations have taken place between the agent and two of the Responsible Authorities; Buckinghamshire Fire and Rescue and Buckinghamshire Council's Environmental Health department. Agreement was reached between the Fire Authority and the agent.
- 5.5 Discussions have continued with the Environmental Health Officer with the aim of assuaging the concerns raised both by residents and Environmental Health.
- 5.6 It is understood that negotiations have also continued between a spokesperson for the residents and the licensing agent.

6. Policy Considerations

6.1 Regard must be given to the Council's Licensing Policy (adopted 7th December 2004 and most recently published 10th December 2018) when determining this application. Of particular relevance (but not limited to) is section 3 which details the concept of attaching condition to licences and section 4 which details the Council's approach to licensing hours.

Section 3.2 refers to conditions being imposed to prevent unnecessary noise and disturbance to local residents by way of limited hours and/or restrictions. Conditions may also be imposed requiring licensees to display signs at all exits of premises reminding customers to leave the premises quietly and to respect the rights of nearby residents.

In making decisions that relate to the hours as to delivery times (section 4.1) consideration will be given to the licensing objective regarding the prevention of public nuisance. Each case where relevant representations are received will be decided on its individual merits.

In making decisions in respect of hours (section 4.4) consideration will be given to representations made by residents in the vicinity of the premises as well as the applicant.

Consideration should also be given to sections 4.6 and 4.7 in relation to designated smoking areas and the controls that may be required to limit the hours that such areas are used to prevent nuisance to neighbouring residents.

The Council's Licensing Policy recognises that noise nuisance problems can sometimes affect residents living close to licensed premises. As such it will always try to balance the legitimate business aspirations of applicants and licensees, the leisure and cultural interests of customers and the reasonable expectation of local residents to a peaceful existence in their own homes and neighbourhoods.

7. Statutory Guidance

7.1 Regard must also be had to relevant parts of the Statutory 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.

8. Resources, Risk and Other Implications

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

8.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.

8.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

9. Determination by the Licensing Sub-Committee

9.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

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

9.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.

9.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

9.4 The following options are available to the Licensing Sub Committee:

9.4.1 Grant the Premises Licence - subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.

9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.

9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.

9.4.4 Reject the whole of the Application.

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

9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

Officer Contact:	Martyn Bruver (01494 732258) Email address: martyn.bruver@buckinghamshire.gov.uk
Background Papers:	Application Ref: 20/01008/LAPRE Licensing Act 2003, as amended Licensing Policy - South Bucks District Council published December 2004 Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.