

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: McDonald's Restaurant 37 Oxford Road New Denham Denham Buckinghamshire UB9 4DA
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Martyn Bruver – Licensing Officer
Report Author	Martyn Bruver – Licensing Officer
Ward/s Affected	Denham ward

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 APPT Corporation Limited (“the applicant”) in relation to McDonald's Restaurant, 37 Oxford Road, New Denham, Buckinghamshire, UB9 4DA, (“the premises”).

2. Background

The premises is located on the south west side of Oxford Road in New Denham within a developed area. There is a forecourt providing parking and a drive-through service running along the sides and rear of the building.

Local authority records indicate the existing restaurant has been at this location since 2001. Prior to this time the Wagon and Horse public house was situated at this site which was licensed under the previous legislation.

Since becoming a restaurant, the premises has not previously required a Premises Licence as it closed at 23.00 and Late Night Refreshment only becomes a licensable activity after this time.

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. The application is for the provision of Late Night Refreshment only between the hours of 23:00-05:00 via drive-through only. A copy of the application is attached to this Report marked **Appendix 2**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
<i>Late night refreshment</i>	Monday to Sunday - 23.00 – 05.00
<i>Hours premises are open to the public</i>	Monday to Sunday - 05.00 – 05.00

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** No objection

4.1.2 **The Licensing Authority:** No objection

4.1.3 **The Fire and Rescue Authority:** No objection

4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received

4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** No objection

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

4.1.7 **The Safeguarding and Child Protection Unit:**
No objection, comment made

4.1.8 **The Primary Care Trust:**
No response received.

4.1.9 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** Two (2) objections were received during the 28-day consultation period which ended on 24th December 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

Two residents living nearby have expressed concerns in relation to extending the hours the restaurant operates. They say they already experience noise prior to 23:00 hours generated by McDonalds' customers who play loud music from their cars, sound their horns, shout loudly and rev their engines. They state this is particularly noticeable during summer months when windows are open.

One resident makes the point that it only takes one incident to interrupt sleep and create a nuisance. His property borders one side of the premises and there is also the potential to be disturbed by lights.

The prevention of crime and disorder

It is suggested that the location would become a night time meeting point for undesirables and there is a potential for late night altercations.

Public safety

One resident said that he and his wife have felt less safe since an attempted burglary where access to their property was apparently gained from McDonalds car park.

5.2 The Licensing Sub-Committee should consider the 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 are contained in the Operating Schedule **Appendix 4** and further conditions were offered by the applicant's agent on 11th January 2021 and are attached at **Appendix 5**.

5.3 During the course of the application, negotiations have taken place between the agent, the Licensing department and one Responsible Authority; Child Safeguarding. Agreement was reached between the Responsible Authority and the agent. The amended Operating Schedule is attached at **Appendix 6**.

5.4 It is understood that negotiations have continued between one of the residents, the licensing agent and representative of the applicant. It has not been possible to contact one of the objectors since they made their representation.

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 1.8 references that Licensing is not the primary mechanism for the general control of anti-social behavior by individuals beyond the direct control the licensee of the premises concerned. There are a number of other mechanisms available for addressing issues of unruly behaviour that can occur away from licensed premises.

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 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.

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 the prevention of Crime and Disorder the statutory guidance states:

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). 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.

Sections 2.4 and 2.5 are not relevant to Late Night Refreshment

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

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.

2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

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 additional 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 Reject the whole of the Application.
 - 9.4.3 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-Committee's decision.

Informative/s -

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Background Papers:	Application Ref: 20/01161/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.