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| SUBJECT: | APPLICATION FOR A NEW PREMISES LICENCE at: 13 Spittal Street, Marlow, SL7 3HJ |
| REPORT OF: | Application under section 17, Licensing Act 2003 |
| Responsible Officer | Brian Whittall – Licensing Officer |
| Report Author | Brian Whittall – Licensing Officer |
| Ward/s Affected | Marlow |

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 Innpacked Ltd, 10 Whittle Road, Ferndown Industrial Estate, Wimborne, Dorset on behalf of their client; Lieviti Ltd, 71-75 Shelton Street, Covent Garden, London, WC2H 9JQ (“The Applicant”) in respect of 13 Spittal Street, Marlow, Buckinghamshire, SL7 3HJ (“the premises”).

2. Background

2.1 The premises are located within a mixed retail and residential area.

The proposed premises licence is intended to be used for a small contemporary osteria-pizzeria serving the finest local and Italian produce to deliver the authentic culinary traditions of Italy. All of our dishes, to be crafted on-site.

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 the decision to grant by this licensing authority. A copy of the application, including a premises plan 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> |
|--|---|
| Supply of alcohol (On the premises only) | Monday - Thursday 11:00 – 22:30 Friday - Saturday 11:00 – 01:00 Sunday 11:00 – 22:00 Christmas Week Mon-Thurs until midnight New Year's Eve until 02:00 |
| Provision of Live Music (Indoor) | Friday - Saturday 23:00 – 01:00 Christmas Week Mon-Thurs until midnight New Year's Eve until 02:00 |
| Playing of Recorded Music (Indoor) | Friday - Saturday 23:00 – 01:00 Christmas Week Mon-Thurs until midnight New Year's Eve until 02:00 |
| Late Night Refreshment | Friday - Saturday 23:00 – 01:00 Christmas Week Mon-Thurs until midnight New Year's Eve until 02:00 |
| Hours premises are open to the public | Monday - Thursday 08:00 – 22:30 Friday - Saturday 08:00 – 01:00 Sunday 08:00 – 22:00 Christmas Week Mon-Thurs until midnight New Year's Eve until 02:00 |

* The Panel should note that the playing of recorded music and performance of live music are de-regulated between the hours 0800 and 2300 hours and therefore fall outside of the jurisdiction of The Licensing Act 2003 unless part of a Review application under section 51.

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Response received - no objection, **Appendix 3**

4.1.2 **The Licensing Authority:** No objection

4.1.3 **The Fire and Rescue Authority:** Response received – 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, **Appendix 4.**
- 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: One** (1) objections were received during the 28 day consultation process a copy of which are attached marked **Appendix 5.**
- 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
Representations mention concerns regarding noise pollution occurring on the premises.
- Residents living nearby have expressed concerns that their right to enjoy the peaceful possession of their property is undermined, and that a statutory nuisance may occur as a result of the granting of the application.
- 5.4 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties.

6. Policy Considerations

- 6.1 Regard must be had to the Council's adopted Statement of Licensing Policy (last published December 2018) when determining this application.

In relation to the prevention of public nuisance the Policy states (p.10)

- 3.16 The Council wishes to protect the amenity of residents and businesses in the immediate area surrounding the licensed premises. Applications should demonstrate that public nuisance will not increase as a result of the application being granted.

3.17 The Authority will particularly take into account the following:

- The measures proposed to prevent noise and vibration escaping from the premises. Such measures may include installation of sound insulation and sound limitation devices;
- Measures proposed to prevent public nuisance from use of outside areas, including smoking areas and outdoor events;
- The measures proposed to prevent disturbance by customers arriving at or leaving the premises, in particular after 11pm, for example appropriate signage at exits and in car parks, parking provision, the provision of door supervisors, use of “quiet last half hour” at dance venues and provision and availability of safe transport home;
- The measures proposed to prevent light pollution from external lighting, including security lighting;
- The measures proposed for refuse storage or disposal and management of any additional litter;
- Representations by Control of Pollution, Thames Valley Police and Environmental Health;
- Representations by local residents in the vicinity of the premises;

6.2 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 guidance states (p.13)

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.

7. Links to Council Policy Objectives

- 7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. Panel Report

8. Resources, Risk and Other Implications

8.1 **Resource:** The only resource implications to date has been officer time. If the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee, however, 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 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 onto 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)

8.3 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 can not be interfered with.

8.4 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.

8.5 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.

8.6 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.

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 Statement of 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.

THE SCHEDULE

The 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

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: ½ 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 2013 (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.

Mandatory Condition - s21 of the Licensing Act 2003 - Door Supervision

Where a condition of this licence requires one or more individuals to be present to carry out a security activity (as defined by the Private Security Industry Act 2001 as amended from time to time) must be licensed with the Security Industry Authority.

Proposed conditions

The prevention of crime and disorder

- A CCTV recording system shall be installed, operated and maintained. The system shall incorporate a camera covering the entrance door and be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises.
- The CCTV system shall be in operation at the premises at all times when the premises are used for the provision of licensable activity. All CCTV recordings shall be securely stored for a minimum of one calendar month.
- A staff member from the premises who can operate the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
- Signage indicating that a CCTV recording system is in operation shall be displayed prominently in the premises. No alcohol shall be supplied if the CCTV equipment is inoperative for any reason.
- A premises daily register shall be kept at the premises. This register shall be maintained and

kept for a rolling period of 12 months. The register shall record all incidents which may have occurred which are relevant to the supply of alcohol and shall be made available to a relevant responsible authority when called upon.

The prevention of public nuisance

- Arrangements shall be put in place to ensure that waste collection contractors do not collect refuse between 19:00 and 07:00.
- Patrons smoking outside the premises shall be monitored regularly to ensure the potential for noise nuisance is controlled.
- The premises' frontage shall be regularly monitored to keep it clean and clear of litter.
- Signage requesting customers to be respectful of others when entering or leaving the premises shall be installed in a prominent position by the premises' exit.
- No person shall be allowed to leave the premises whilst in the possession of any open drinking vessel, whether empty or containing any beverage

The protection of children from harm

- A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are the following recognised photographic identification cards: a driving licence, a passport, a military identification card or a Proof of Age card carrying a 'PASS' logo.
- Notices advertising that the premises operates a "Challenge 25" scheme shall be displayed in a clear and prominent position at the premises entrance.
- All occasions when persons have been refused service shall be recorded in the premises daily register.
- The premise licence holder or Designated Premises Supervisor shall ensure that all management and staff who are not personal licence holders are fully trained and briefed on the four licensing objectives and Challenge 25 and they are adhered to

Informative/s -

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| Officer Contact: | Brian Whittall (01494 421 346) – email address: brian.whittall@buckinghamshire.gov.uk |
| Background Papers: | Application Ref 21/00326/LAPREN Licensing Act 2003, as amended Licensing Policy – Wycombe Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended. |