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| SUBJECT: | APPLICATION FOR A NEW PREMISES LICENCE at: 'Little Wonder' 14 Mansion Lane, Iver, Buckinghamshire, SL0 9RH |
| REPORT OF: | Application under section 17, Licensing Act 2003 |
| Responsible Officer | Charlie Robinson – Licensing Manager |
| Report Author | Charlie Robinson – Licensing Manager |
| Ward/s Affected | Denham |

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 Thomas & Thomas Partners LLP, 38A Monmouth Street, London, WC2H 9EP on behalf of their client; Mr Roberto Costa of 'Little Wonder' 14 Mansion Lane, Iver, Buckinghamshire, SL0 9RH ("The Applicant") in respect of 'Little Wonder' 14 Mansion Lane, Iver, Buckinghamshire, SL0 9RH ("the premises").

2. Background

2.1. The premises consist of a detached residential home on the corner plot of Mansion Lane and Iverdale Close. The area of the premises marked for licensable activities is a detached outbuilding (understood to be an old garage) in the garden to the rear of the main house. The area is heavily residential, with residents neighbouring either side of the property and on the opposite corner of Iverdale Close and Mansion Lane. On the opposite side of Mansion Lane is agricultural land. A location plan showing the premises location is attached to this report marked **Appendix 1**. The premises has not previously been licensed under the Licensing Act 2003.

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**. The applicant describes the intended use of the premises as a 'Small private gourmet club operating on an ad-hoc basis.'

3.2. The licensable activities sought are as follows:

| Proposed activity | Proposed hours | |
|---|-----------------------|---------------|
| Supply of alcohol (Consumption on and off the premises) | Monday – Sunday | 12:00 – 23:00 |
| Opening Hours | Monday – Sunday | 12:00 – 23:30 |

* 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 objections.

4.1.2. The Licensing Authority: Response received – representation in relation to the promotion of all licensing objectives. **Appendix 3.**

4.1.3. The Local Environmental Health Authority (Head of Environmental Health): R Response received – no objections

4.1.4. The relevant enforcing authority under the Health and Safety at Work etc Act 1974: Response received – no objections

4.1.5. The Fire and Rescue Authority: Response received – No response received.

4.1.6. The Local Planning Authority (Head of Sustainable Development): No response received.

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

4.1.8. The Safeguarding and Child Protection Unit: No response received.

4.1.9. The Primary Care Trust: No response received.

4.1.10. No responses were received from any other Responsible Authority.

4.2. **Any other persons:** Eleven (11) objections were received during the 28-day consultation process a copy of which are attached marked **Appendix 4.**

4.3. No letters of support were received.

5. Licensing Officer's Observations:

5.1. The Relevant Representations received raise the follows issues:

5.2. The prevention of public nuisance

Residents living nearby have expressed significant concerns in their representations about the proposed operating hours of the premises and the noise from patrons both whilst on the premises and when leaving the premises. The majority of representations expressed uncertainty about the unknown frequency of the premises being used and the potential for the use of the premises to change and develop into a more restaurant/public house type of establishment if a licence was to be granted.

5.3. The prevention of crime and disorder

Some objectors have outlined their concern and opposition of the premises receiving this licence due to the anticipated anti-social behaviour and other related crime and disorder that could be associated with a premises selling alcohol.

5.4. A number of the representations refer to matters that would not be relevant to the licensing regime including the status of the planning permission of the premises and safety issues as a result of the nearby highway and parking provision. The application for a premises licence must be determined on its own merits and solely in respect of the licensable activities being proposed and the direct impact of those activities. Any change to the planning permissions for the premises must be considered as part of the planning regime.

5.5. The Licensing Authority

The representation on behalf of the licensing authority states that it is felt that the conditions proposed within the applicants operating schedule are insufficient to effectively promote the licensing objectives. The Licensing Authority feels that the application form, and accompanying operating schedule, do not reflect any meaningful consideration of the location of these premises and the potential adverse impact on those living in the vicinity of the premises from the provision of licensable activities. It goes on to raise the importance of adequate safeguards, such as appropriate conditions and licensed hours, being in place to ensure the licensing objectives are not adversely affected by activity associated with the sale of alcohol.

6. Policy Considerations

6.1. Regard must be given to the Council's Licensing Policy (last published 10th December 2018) when determining this application. Of particular relevance (but not limited to) is Section 2.8 which states:

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.

6.2. Section 3 which details the concept of attaching condition to licences and section 4 which details the Council's approach to licensing hours.

6.3. 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.

6.4. 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.

6.5. Buckinghamshire Council has recently approved a new Licensing Policy which is expected to take effect on 7th March 2022. As part of that policy it states at paragraph 3.18:

Potential applicants are encouraged to discuss their proposals with the Licensing Authority and responsible authorities. This will help them to formulate proposed conditions which will meet the licensing objectives and avoid objections ("relevant representations"). Where they fail to do so and relevant representations are received, the Licensing Authority will have to consider whether additional conditions are appropriate to promote the licensing objectives.

3.20 Which states: A key concept underpinning the Act is that conditions attached to licences and certificates are tailored to the individual style and characteristics of the premises and licensable activities concerned. It is not the intention to impose disproportionate or overly burdensome conditions where they are not justified. Conditions may only be imposed on licences where they are appropriate and proportionate for the promotion of one or more of the licensing objectives.

Sections 3.26 and 3.27 confirm that the police will be the main source of advice on the issue of prevention of crime and disorder and appropriate conditions.

Section 3.32 sets out the matters which the Licensing Authority will consider in relation to crime and disorder including measures in respect of accountability to ensure compliance with the Premises Licence; the responsible sale and supply of alcohol; physical measures e.g.

the layout of the premises; CCTV; Identification measures; whether door supervisors are necessary.:

Section 3.35 sets out the matters which the Licensing Authority will consider in relation to public nuisance including measures in respect of noise escape; customer arrival and departure, smokers; parking; location and outside areas.

6.6. Regard must also be had to the National Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

In relation to Prevention of Public Nuisance the Statutory Guidance states:

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. 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.

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.

8. Resources, Risk and Other Implication

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.

Human Rights

- 8.2. The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents. Any decision taken must be appropriate and proportionate to the objective being pursued. In particular, the following should be taken into consideration: Article 6 - the right to a fair hearing Article 8 - respect for private and family life Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence).
- 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 cannot 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
- 9.2. 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.

10. Conditions

THE SCHEDULE

For the purposes of this schedule;

"the Act" means the Licensing Act 2003;

"Anti-Social Behaviour" has the meaning given in section 36 of the Anti-social Behaviour Act 2003;

"Disability" has the meaning given in section 1 of the Disability Discrimination Act 1995;

"Relevant Premises" has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

"Responsible Person" has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act (the relevant parts of which are attached to this licence).

Mandatory Condition - s19 of the Licensing Act 2003 - Supply of Alcohol

No supply of alcohol may be made under the premises licence:

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made authorised by a person who holds a personal licence

Mandatory 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.

MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010 AS AMENDED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS)(AMENDMENT) ORDER 2014:

Mandatory Condition 1

(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or

glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

Mandatory Condition 2

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

Mandatory Condition 3

(1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

Mandatory Condition 4

The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: " pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

"An activity which is not prohibited by paragraph 1(2)(b) of the Schedule to the 2010 Order, as it was in force immediately before the coming into force of this Order, because it related to alcohol consumed at a table meal (as defined in section 159 of the 2003 Act), will continue not to be prohibited provided certain conditions are met; these are that the activity is available only to an individual who holds a ticket or other written invitation in respect of that activity which was purchased by, or given to, that individual on or before 30th September 2014, and the activity takes place on or before 5th April 2015."

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.

Proposed conditions consistent with the applicant's operating schedule

1. The premises shall only be used for pre-booked events.
2. Food shall be available on the premises at all times when licensable activities are taking place.

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| Officer Contact: | Charlie Robinson (01494 432 056) – email address: charlie.robinson@buckinghamshire.gov.uk |
| Background Papers: | Application reference 21/01374/LAPRE Licensing Act 2003, as amended Licensing Policy - South Bucks Area Published 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended. |