

LICENSING ACT 2003

Sections 17, 18, 19, 19A, 21 and 23. Licensing Act 2003 (Hearings) Regulations 2005/44 and Licensing Act 2003 (Hearings) Amendment Regulations 2005/78

NOTIFICATION OF REJECTION OF APPLICATION FOR A PREMISES LICENCE WHERE RELEVANT REPRESENTATIONS WERE MADE

PREMISES: 74 Oxford Road, New Denham, Denham, Buckinghamshire, UB9 4DN

To:

The Applicant – Mr Ashok Kumar Selvaraj
Any Persons who made Relevant Representations
Any Responsible Authority who made Relevant Representations
The Chief Constable of Thames Valley Police

Take Notice

THAT following a determination of the Licensing Sub-Committee

ON 8th March 2022

BUCKINGHAMSHIRE COUNCIL as the Licensing Authority for the Premises

HAS RESOLVED

TO REJECT THE APPLICATION FOR A PREMISES LICENCE

The Panel noted that at the commencement of the hearing the applicant, through his agent advised, that he was amending his application for the grant of a premises licence in relation to the licensable activities, the hours, the licensable area and the conditions. The Panel therefore made their decision on the revised application.

Reasons for the Panel's Decision

The Panel were disappointed with the late submission of the substantial amendments to the application by the applicant's agent which responsible bodies and interested parties had had no time to consider in any detail.

As a direct consequence of this action the Panel noted that the Police and the Fire Authority as the responsible bodies with expertise in relation to the licensing objectives of crime and disorder and public safety had had no opportunity to consider the revised application and provide any response to the new proposals.

Nonetheless, the Panel took account of the written representations which had previously been submitted by responsible bodies and interested parties and the oral submissions of the responsible bodies and interested parties who were present at the hearing and the concerns that

they raised in relation to the licensing objectives of crime and disorder, public nuisance, protection of children from harm and public safety.

The Panel took account of the Buckinghamshire Council Alcohol and Entertainment Licensing Statement, in particular Part 3 - promotion of the licencing objectives and the guidance issued under Section 182 Licensing Act 2003 with particular reference to paragraphs 2.2 and 2.3 and 2.15 to 2.21 in reaching their decision.

The Panel noted that the application which had originally been submitted and the conditions agreed were for one type of premises, namely a bar and shisha lounge and that whilst the application had been amended and the applicant was now proposing to open a family restaurant the conditions proposed did not reflect the new business model and in places contracted the new proposal, for example, the identification scanning system agreed with the police; the conditions relating to a noise limiter; and the condition refusing anyone under 18 years to be permitted on the premises when it is open to the public.

The Panel had no faith that the applicant and his representative were engaged in any meaningful attempt to promote the licensing objectives by offering the conditions agreed and noted that the applicant's representative, on more than one occasion, during the course of the hearing, acknowledged that the conditions were inappropriate to the type of business which was now being proposed. The Panel were of the view that the applicant and his representative naively assumed that by offering up any conditions the application was more likely to be granted.

The Panel noted with concern that the statement that the premises had recently "been taken over by new investors..." as set out in the original application was incorrect and that no attempt had been made by the applicant or his representative to correct this mis-statement when the amendments to the application were proposed. More importantly, it was only in response to direct questions from the responsible bodies and the Panel that the applicant admitted that he had no interest in the premises save a verbal agreement with the leaseholder and that no business arrangement was to be completed until a premises licence was granted.

Taking account of the case of Retrobars Wales Ltd v Bridgend Borough Council [2012] EWHC 3834 (Admin) the Panel were concerned that the controlling influence behind the business remained the current leaseholder. On the balance of probabilities, the Panel believed that applicant did not have any control of the business or management of the premises and as such the current leaseholder would have the benefit of the premises licence if granted to the applicant.

The Panel considered the relevant provisions of the Human Rights Act 1998, namely:

- Article 6 – the right to a fair hearing
- Article 8 – respect for private and family life
- Article 1, First Protocol – peaceful enjoyment of possessions.

The Panel considered that, in all the circumstances, the revised application and the proposed conditions agreed by the applicant and his representative did not promote the licensing objectives of the prevention of public nuisance, the prevention of crime and disorder, public safety and the protection of children from harm and that it was reasonable and proportionate to reject the application for the grant of a premises licence.

Any Party aggrieved by the Decision given in this Notice may make a written Appeal within 21 days to the Clerk to the Justices, Wycombe and Beaconsfield Magistrates Court, Milton Keynes Magistrates Court, 301 Silbury Boulevard, Milton Keynes, Buckinghamshire MK9 2AJ.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small flourish.

Clerk to the Licensing Sub-Committee

Date: 11th March 2022.