

SUBJECT:	APPLICATION FOR A PREMISES LICENCE at: Choice of Taste, London Road, Wooburn Moor, High Wycombe, HP10 0NJ
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	The Wooburns, Bourne End & Hedsor Ward

1. Purpose of Report

To provide Members with information enabling the determination of an application for a premises Licence, in respect of which relevant representations have been received.

The Application has been submitted by Arka Licensing Consultants, Trident Business Centre, 89 Bickersteth Road, London, SW20 9JZ (“the agent”) in respect of their client Blandina Jesudasan Alexis, 5 Westwick Gardens Hounslow TW4 6LW (the premises licence holder”) for Choice of Taste, London Road, Wooburn Moor, High Wycombe, HP10 0NJ (“the premises”).

2. Background

2.1 A licence was granted for this premises following the transitional period in 2005. Since 2005 the premises has had history of different operators the last of which was dissolved at Companies House. Accordingly, the premises licence lapsed under section 27 of The Act in December 2019 from which point the premises has remained closed. The premises is located adjacent to the M40 and has some residential properties in Whitehouse Lane across the A40.

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

3. The Application

3.1 This application is for a Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application is attached to this report marked **Appendix 2**.

A plan of the “premises” is attached **Appendix 3**.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
Supply of alcohol (On the premises only)	Sunday - Thursday 11:00 - 01:00 Friday - Saturday 11:00 - 02:00

Provision of Live Music (Indoor)	Sunday - Thursday	23:00 - 01:00
	Friday - Saturday	23:00 - 02:00
Playing of Recorded Music (Indoor)	Sunday - Thursday	23:00 - 01:00
	Friday - Saturday	23:00 - 02:00
Late Night Refreshment	Sunday - Thursday	23:00 - 01:00
	Friday - Saturday	23:00 - 02:00
Hours premises are open to the public	Sunday - Thursday	11:00 - 01:00
	Friday - Saturday	11:00 - 02:00

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** No objection.
- 4.1.2 **The Licensing Authority:** Representation made, **Appendix 4.**
- 4.1.3 **The Fire and Rescue Authority:** No response received.
- 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):** Representation made. **Appendix 5.**
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received.
- 4.1.7 **The Safeguarding and Child Protection Unit:** No response received.
- 4.1.8 **The Primary Care Trust:** No response received.

4.2 Any other persons: No response received.

5. Licensing Officer's Observations:

- 5.1 The Relevant Representations received raise the same issues that the applicant has failed to put forward adequate proposals to prevent the risk of public nuisance caused by live or recorded music, played until the early hours of the morning and more broadly how the licensing objectives are to be promoted.

6. Policy Considerations

- 6.1 Regard must be had to the Council's adopted Licensing Policy published February 2022 when determining this application. Of particular relevance (but not limited to) the following:

Hours

- 3.9 In general, the Licensing Authority will set the hours of licensed premises according to the individual merits of the case.
- 3.10 In some circumstances, flexible licensing hours can help to avoid harm to the licensing objectives caused by customers leaving licensed premises at the same time. Varied closing times can also help to promote diverse leisure economies.
- 3.11 However, in line with the duty to promote the licensing objectives, the Licensing Authority's Policy is to respect the right of residents to peace and quiet. In general,

the Licensing Authority will take a more stringent approach to licensing hours in areas of higher residential density where there is greater risk of public nuisance.

Licence conditions

3.23 In considering variation applications, decision concerning conditions will be confined to the subject matter of the application as per case law ([Taylor vs Manchester City Council \[2012\]](#)). In practice this means that conditions will not be imposed in response to a variation application that do not relate to the application sought.

The prevention of public nuisance

3.35 Public nuisance relates to the negative effects of nuisances including noise, light, odour, dust and litter affecting, or likely to affect, at least a few separate households locally. The Licensing Authority is keen to protect the amenity of residents and businesses in the vicinity of licensed premises. At the same time the Licensing Authority is aware that the licensed trade is important to the local economy and promoting the Council's culture and leisure aspirations. Consequently, the Licensing Authority will try and work together with statutory agencies, licensed businesses, residents and other businesses to reach a compromise in its decision making.

3.36 In considering all licence applications, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. In preparing applications, applicants are strongly encouraged to consider the measures set out below. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.

3.37 Particular measures include:

- a) **Noise escape.** The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices. In appropriate circumstances and where not included in the operating schedule, a condition may be imposed requiring the assessment by the applicant (either with or without the involvement of Environmental Health), of potential noise sources which could cause disturbance to those in the vicinity and to identify and implement appropriate control measures.
- i) **Outside areas.** The Licensing Authority supports the use of outside areas such as gardens and forecourts however robust management controls are usually required to ensure that the use of these areas does not cause a nuisance. Control measures may include adequate supervision, regular glass collections, curfews and last entry conditions.
- m) **Complaints procedure.** All licensed premises are expected to have a complaints procedure in place. This may include a dedicated phone line available for local residents to use in the event of problems arising. Any complaint should be recorded in a log together with details of any action taken to the response. All staff should be made aware of the complaints procedure and provided with clear instructions. In some circumstances regular meetings with neighbouring residents can be beneficial in addressing any concerns. Experience shows that this is most effective if action is taken at early stage to build good relations with local residents.

- 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.

Prevention of a public nuisance

- 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.
- 2.21 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. Resources, Risk and Other Implications

- 7.1 **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.
- 7.2 **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.

- 7.3 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.
- 7.4 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.
- 7.5 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 cannot be interfered with.
- 7.6 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.
- 7.7 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.
- 7.8 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.

8. Determination by the Licensing Sub-Committee

- 8.1 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.

- 8.2 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.
- 8.3 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 to promote the licensing objectives.
- 8.4 The following options are available to the Licensing Sub Committee:
- 8.4.1 Grant the Premises Licence – as requested.
 - 8.4.2 Reject the whole or part of the Application.
 - 8.4.5 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).
- 8.5 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.

Conditions offered in the Operating Schedule

Informative/s -

Officer Contact:	Brian Whittall (01494 421 346) – email address: brian.whittall@buckinghamshire.gov.uk
Background Papers:	Application Ref PR202310-334404 Licensing Act 2003, as amended Statement of Licensing Policy – Published December 2023. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.