

SUBJECT:	APPLICATION FOR A PREMISES LICENCE at: Grillbox Peri Peri, 1 Dashwood Avenue, High Wycombe, HP12 3DN
Report of	Application under section 17, Licensing Act 2003
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	Booker, Cressex & Castlefield 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 Grillbox high Wycombe Limited (“the applicant”) in respect of Grillbox Peri Peri, 1 Dashwood Avenue, High Wycombe, HP12 3DN (“the premises”).

2. Background

- 2.1 The premises is located within a high-density residential area. There are no parking spaces available for customers to use and the immediate vicinity of the premises is subject to parking restrictions (Double yellow lines).
- 2.3 A location plan showing the premises is attached to this report marked **Appendix 1**. The current layout plan is attached as **Appendix 2**.

3. The Application

- 3.1 This application is made under section 17 of ‘The Act’ for a premises licence for the provision of late night refreshment only to take immediate effect. A copy of the application is attached as **Appendix 3**.
- 3.2 The requested permitted licensable activities are as follows:

<u>Licensable activity</u>	<u>Standard days and timings</u>
Provision of Late Night Refreshment	Every day 09:00 – 04:00
Hours premises are open to the public	Every day 09:00 – 04:00

- 3.3 The steps the applicant intends to take to promote the licensing objectives are set out in the operating schedule.

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Submitted a representation during the consultation period a copy of which is attached as **Appendix 4**. Both the police and the applicant have agreed to an amendment to reduce the provision of late night refreshment to 03:00 hours and to amended conditions as attached **Appendix 5**.

4.1.2 **The Fire and Rescue Authority:** Response received: No comment

4.1.3 **The Local Planning Authority (Head of Sustainable Development):** Response received, **Appendix 6**

4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** No Response received

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

4.1.6 **The Safeguarding and Child Protection Unit:** No response received

4.1.7 **The Licensing Authority:** Submitted a representation during the consultation period. A copy of which is attached as **Appendix 7**.

4.1.8 No responses were received from any other Responsible Authority.

4.2 Other persons: No response received.

4.3 No letters of support were received during the consultation period.

5. Licensing Officer's Observations:

5.1 The Relevant Representation mainly raises the follows issues:

- The prevention of public nuisance – To protect the amenity of residents within the vicinity of the premises

5.2 It shall be for the panel to consider if the conditions proposed by the applicant and those agreed with the police are considered appropriate for a Premises Licence to be granted.

6. Policy Considerations

6.1 Regard must be given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to Part C - promoting the licensing objectives and the Council's approach to preventing a public nuisance (page 35).

6.2 Paragraph 8.41 of the Guidance states: "In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. ...applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application."

6.3 The Guidance goes on to state, paragraph 8.42: "Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
 - any risk posed to the local area by the applicants' proposed licensable activities..."
- 6.4 Paragraph 8.43 states, "Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Finally, the Guidance states at paragraph 8.43, "It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application."
- 6.5 In relation to licence hours Paragraph 3.11 of Buckinghamshire Council's Policy states: "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."
- 6.6 In paragraph 3.13 it states: "Shops, stores and supermarkets will normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. Further, in the case of individual shops which are known to be a focus of disorder and disturbance then, subject to representations from, for example, the police or other persons, a limitation on licensing hours may be appropriate."
- 6.7 In relation to the prevention of a public nuisance licensing objective, Paragraph 3.35 states "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."
- 6.8 In paragraph 3.36, states "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. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance."
- 6.8 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:
- 6.9 2.15: The 2003 Act enables licensing authorities and responsible authorities, through 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.

6.102.16: 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.

6.112.18: 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.

6.122.19: Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. 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.

6.132.21: 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.

6.14 Regarding delivery services section 3.10 states “Persons who run premises providing ‘alcohol delivery services’ should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.”

6.15 Paragraph 10.15 goes on to say “Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.”

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 appeal 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 need 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 to vary the 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 where there is no need for such conditions. 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 in order to promote the licensing objectives.

8.4 The following options are available to the Licensing Sub Committee:

8.4.1 Grant the Application in full or part - subject to any Conditions to be attached to the premises licence (which modify, or add to or vary the Conditions already imposed on it) 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.

8.4.2 Reject the whole of the Application.

8.4.3 Grant the Application subject to different conditions for different parts of the premises or 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:

8.5.1 It may not reject the whole or part of the application or modify or add to or vary the existing conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the four licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee's decision.

8.5.2 When determining the application to vary the Premises Licence consideration must be given to the effect of the variations proposed. Any modification or variation to Conditions or any additional Conditions to be added to the Premises Licence must also be as a result of the effect of the variation if granted on the promotion of the four licensing objectives.

Conditions offered in the Operating Schedule

The Prevention of Crime and Disorder

- We will try to minimise crime where is possible and get cctv around my premises and security
- panic button

The Prevention of public nuisance

- Make sure no one does anything outside the shop to cause nuisance

Protection of children from harm

- Make sure it's child friendly and make sure the parents are with them the whole time

Informative/s -

This Premises Licence plan has been raised by the Licensing Authority as part of their representation in which they state that the plan appears to be inaccurate and does not show a rear extension which has been added to the premises nor an accurate representation of the means of escape. The plan also does not show fixed fittings in place such as the serving counter. The applicant is advised to contact the Planning Department to check compliance with the relevant planning legislation/requirements and to submit any necessary planning application prior to operation.

Officer Contact:	Brian Whittall (01494 421 346) – email address: brian.whittall@buckinghamshire.gov.uk
Background Papers:	Application Ref: PR202303-316736 Licensing Act 2003, as amended Licensing Policy – Buckinghamshire Council Published February 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.