

<b>SUBJECT:</b>	<b>APPLICATION FOR A VARIATION OF A PREMISES LICENCE at: Ohana, 1-2 Burkes Court, Station Road, Beaconsfield, HP9 1QR</b>
<b>REPORT OF:</b>	<b>Application under section 34, Licensing Act 2003</b>
<b>Responsible Officer</b>	<b>Stacey Bella – Licensing Officer</b>
<b>Report Author</b>	<b>Stacey Bella – Licensing Officer</b>
<b>Ward/s Affected</b>	<b>Beaconsfield Ward</b>

### 1. Purpose of Report

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

The Application has been submitted by Peter Conisbee of PcLicensing, 4 Beacon Close, Huntingdon, PE29 6GB (“the agent”) in respect of their client Steak Shell Ltd, 1-2 Burkes Court Station Road, Beaconsfield, HP9 1QR (the premises licence holder”) for Ohana (Formerly Tarrus), 1-2 Burkes Court, Station Road, Beaconsfield, HP9 1QR (“the premises”).

### 2. Background

2.1 The licence was first granted in 2021. An initial application to vary the premises licence to extend the hours for permitted activities and to make changes to conditions was submitted in October 2023, this was later withdrawn by the applicant before a decision was made. Following this, an application for a minor variation to amend the internal layout of the premises was submitted in January 2024, this was subsequently granted on 7<sup>th</sup> February 2024. At the same time a notification of a change to the name of the premises from ‘Tarrus’ to ‘Ohana’ was received.

2.2 The premises consists of the ground floor and first floor of the unit and fronts onto Station Road, which is located in the Beaconsfield New Town. The area surrounding the premises is made up of a mixture of retail, commercial and residential units.

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

### 3. The Application

3.1 This application is for a variation of a Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. The application has been made to change the hours for permitted activities, as follows:

#### **Activities and timings currently permitted:**

<b><u>Activity currently permitted</u></b>	<b><u>Current hours</u></b>
<b>The sale by retail of alcohol</b> Both on and off the premises	Sunday – Thursday 11:00 – 00:00  Friday – Saturday 11:00 – 01:00  11:00 – 01:00 on any day preceding a bank holiday
<b>The provision of late night refreshment</b> Both on and off the premises only	Sunday – Thursday 23:00 – 00:00  Friday – Saturday 23:00 – 01:00  23:00 – 01:00 on any day preceding a bank holiday
<b>Hours premises are open to the public</b>	At the licence holders discretion

**Proposed activities and timings:**

<b><u>Proposed activity</u></b>	<b><u>Proposed hours</u></b>
<b>The sale by retail of alcohol</b> Both on and off the premises	Sunday – Thursday 11:00 – 01:45  Friday – Saturday 11:00 – 02:45  The supply of alcohol to cease on the ground floor Sunday to Thursday 00:00 and Friday to Saturday 01:00 and 01:00 on any day preceding a bank holiday.  On the first floor the sale of alcohol to cease at 02:45 on any day preceding a bank holiday
<b>The provision of late night refreshment</b> Both on and off the premises only	Sunday – Thursday 23:00 – 01:45  Friday – Saturday 23:00 – 02:45  Late night refreshment to cease on the ground floor Sunday to Thursday 00:00 and Friday to Saturday 01:00

	<p>and 01:00 on any day preceding a bank holiday.</p> <p>Late night refreshment to cease on the first floor at 02:45 on any day preceding a bank holiday.</p>
<b>Hours premises are open to the public</b>	<p>Sunday – Thursday 11:00 – 02:00</p> <p>Friday – Saturday 11:00 – 03:00</p> <p>The ground floor will close to the public Sunday to Thursday at 00:00 and at 01:00 on any day preceding a bank holiday.</p> <p>The first floor will close at 03:00 on any day preceding a bank holiday.</p>

3.2 The application seeks to amend the following conditions:

- Annex 2, condition 8, to read as follows:

The internal ground floor of the premises shall only operate as a restaurant where the supply of alcohol for consumption on the premises shall only be to a person seated taking a table meal, save for a maximum of 6 persons at the bar area.

- Annex 2, condition 15, to read as follows:

Delivery of alcohol will only be permitted when:

- Accompanied by an order for a meal
- Delivered to a verified or registered address occupied by the customer
- Payment for off sales only to be accepted by means of card transaction or through bona fide on-line payment services prior to delivery. There shall be no cash payments on delivery.
- Deliveries will cease at 2300 hours

A copy of the application is attached to this Report marked **Appendix 2**. The current licence is attached as **Appendix 3**.

A plan of the “premises” is attached as **Appendix 4**.

## 4. Relevant Representations

### 4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** No objection. **Appendix 5**.
- 4.1.2 **The Licensing Authority:** No objection, **Appendix 6**.
- 4.1.3 **The Fire and Rescue Authority:** No objection, **Appendix 7**
- 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):** No response received.

- 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:** One (1) objection was received during the 28 day consultation period on the grounds of the Prevention of Public Nuisance licensing objective. **Appendix 8.**

## **5. Licensing Officer's Observations:**

5.1 The Relevant Representation received raise the follows issues:

- Prevention of a public nuisance  
The representation mentions a concern that the application shall have a negative effect on residents in nearby residential properties.

5.2 Additional information was provided by the "agent" in response to the objection. A copy of this letter is attached as **Appendix 9.**

5.3 A copy of the noise management plan for the premises is attached as **Appendix 10.**

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**

6.3 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**

3.36 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.
- b) **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.
- c) **Smokers**  
Arrangements to minimise disturbance from customers smoking outside the premises. These may include supervision, delineated areas for smoking, controls on numbers and preventing customers taking alcohol outside.
- d) **Customer departure**  
The steps taken or proposed to be taken by the applicant to prevent disturbance by customers leaving. Such steps will include proper winding down policies so that customers leave gradually and quietly, notices to customers requesting respect for neighbours, the use of dedicated taxis, management of queues for taxis, direction of customers away from residential areas, supervision of exterior areas, requesting customers to respect neighbours and prevention of customers gathering outside the premises.
- e) **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.

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

6.5 In relation to the prevention of public nuisance the Statutory Guidance states:

2.21 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.

- 2.22 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.
- 2.24 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.
- 2.27 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. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

## **8. Resources, Risk and Other Implications**

- 8.1 **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.
- 8.2 **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.

- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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.
- 8.8 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.

## **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 harmRegard 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.
- 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 to promote the licensing objectives.
- 9.4 The following options are available to the Licensing Sub Committee:
- 9.4.1 Grant the Premises Licence – as requested.
  - 9.4.2 Reject the whole or part 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

- 10.1 The existing conditions can be found on the current licence which is attached as **Appendix 3**.
- 10.2 The conditions to be amended as part of this application to vary the licence can be found at **Paragraph 3.2** above.
- 10.3 The new conditions offered by the applicant as part of this application to vary the premises licence are shown below:
- 17. When the premises is operating beyond 0100 hours, a SIA licensed door supervisor shall be on duty at the premises from 2200 hours to 15 minutes after close.
  - 18. The licensee/management shall record the full name, home address and contact telephone number, SIA registration number, and the time/date of employment of any door supervisor(s) employed at the premises. Where door supervisor(s) are provided by an agency the name, business address and contact telephone number will also be recorded. These records are to be maintained for no less than 12 months and will be made available to an authorised officer on request.
  - 19. Across the entire premises the volume levels of recorded music played will not exceed that of background levels.
  - 20. A noise management plan for the entire venue will be in place at all times and reviewed annually. A copy of the noise management plan will be held on the premises and made available to an authorised officer on request.
  - 21. Food will be available at all times the premises is open for licensable activity.
  - 22. Supply of alcohol for consumption on the premises in the exterior seating area will be by table service only, to a maximum of 24 persons.
  - 23. The ground floor outside area will be closed by 21:30hours to minimise any disturbance.



24. There shall be no vertical drinking on the ground floor internal or external.
25. The first floor of the premises shall at all times be restricted to members (and their guests) only and operate as a bar/ restaurant. As such, the following shall apply:
- A membership scheme will be in existence for access to the first floor which shall record the following:
- a. The name, address, email and contact telephone number of each member.
  - b. Membership details will be held on the premises and available at all times to an officer of the council & Thames Valley Police.
  - c. Food will continue to be available at all times to members and their guests.

**Informative/s -**

<b>Officer Contact:</b>	<b>Stacey Bella (01296 585 336)</b> <a href="mailto:stacey.bella@buckinghamshire.gov.uk">stacey.bella@buckinghamshire.gov.uk</a>
<b>Background Papers:</b>	<b>Application Ref PR202401-339789</b> <b>Licensing Act 2003, as amended.</b> <b>Licensing Policy – As adopted March 2022.</b> <b>Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.</b>