

Application for the Review of a Premises Licence: Kho Kho Restaurant, 101-103 High Street, Ruislip, HA4 8JN

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer - Licensing Officer
Papers with report	Appendix 1 - Application for a premises licence Appendix 2 - Officers Recommendation Appendix 3 - Current Licence Appendix 4 - Map of the area Appendix 5 - Representations Appendix 6 - Photos
Ward	West Ruislip

1.0 SUMMARY

To determine an application for a premises licence review in relation to Kho Kho, 101–103 High Street Ruislip, HA4 8JN (**Appendix 1**)

2.0 RECOMMENDATIONS

That the Licensing Sub-Committee remove the specified Designated Premises Supervisor, Mr Aditya Nandal, from the licence and that the following conditions are added to the licence:

- 1) Last entry to the premises shall be 22:30 daily**
- 2) Regulated Entertainment up until 23:00 must adhere to the relevant conditions of the licence**
- 3) Regulated Entertainment should cease at 23:00**
- 4) Regular Noise boundary checks conducted by a manger**
- 5) All boundary checks must be recorded in an incident logbook.**
- 6) Windows and doors must be closed during regulated entertainment.**
- 7) All staff must receive health and safety training by an accredited course provider.**

See attached document (**Appendix 2**).

3.0 APPLICATION

Application to review the premises licence for Kho Kho, 101-103 High Street Ruislip, to bring the licence into compliance with the Prevention of a Public Nuisance licensing objective. The review has been prompted by complaints to the Anti-Social Behaviour Team of noise emanating from the premises whilst regulated entertainment is taking place.

3.1 Type of application applied for

Review of Premises Licence.

3.2 Description of the premises

Bar and restaurant situated along the High Street of Ruislip. The premises hosts regular music and entertainment nights.

3.3 Current sale of alcohol and opening hours

	Sale of Alcohol	Opening hours of the premises
Monday	10:00 – 00:00	10:00 – 00:30
Tuesday	10:00 – 00:00	10:00 – 00:30
Wednesday	10:00 – 00:00	10:00 – 00:30
Thursday	10:00 – 00:00	10:00 – 00:30
Friday	10:00 – 01:30	10:00 - 02:00
Saturday	10:00 – 01:30	10:00 - 02:00
Sunday	10:00 – 00:00	10:00 – 00:30

3.4 Current Licence

Appendix 3.

3.5 Other relevant licensed premises nearby (Appendix 4)

Premises	Activities Authorised	Times Authorised
Red Onion Café 95 High Street Ruislip	Sale of alcohol	Monday to Saturday 10:30-23:00 Sunday 10:30 – 22:00
Melisi Restaurant 129 High Street	Sale of alcohol Late Night Refreshment	11:30 - 23:00, Sunday to Wednesday 11:30 - 00:00, Thursday 11:30 - 01:00, Friday and Saturday 23:00 - 00:00, Thursday

		23:00 - 01:00, Friday and Saturday
Sarasas 158-160 High Street, Ruislip	Sale of alcohol	Monday to Saturday 10:00 – 01:00 Sunday 12:00 – 23:30
	Regulated entertainment	Monday to Thursday 09:00-23:00 Friday to Saturday 09:00 – 01:00
	Late Night Refreshment	30 minutes after the terminal hour
Smugglers Cove, 153 High Street, Ruislip,	Sale of Alcohol	Sundays 12:00 – 00:00 Monday – Wednesday 11:00 – 23:00 Thursdays 11:00 – 00:00 Fridays 11:00 – 00:30 Saturdays 11:00 – 01:00
	Regulated Entertainment	Sundays 15:00 – 00:00 Mondays, Tuesdays, Wednesday 18:00 – 23:00 Thursdays 18:00 – 00:00 Fridays 18:00 – 00:30 Saturday 15:00 - 01:00
	Late Night Refreshment	Thursdays 23:00 - 00:00 Fridays 23:00 - 01:00 Saturdays 23:00 - 01:30 Sundays 23:00 24:00

3.6 Map of the area

Appendix 4.

4.0 CONSULTATION

4.1 Closing date for representations

Licensing Sub-Committee – 20 January 2022
Part 1 - Public

24 December 2021.

5.0 REPRESENTATIONS

- 5.1 We have received five representation; four from interested parties and one from the licensing authority in its capacity as a responsible authority.

Name and Address	Grounds for Representation	Appendix
Mark Batson, 107a High Street, Ruislip, HA4 8JN	Prevention of a public nuisance	Appendix 5
Cllr Philip Corthorne – Ward Councillor for West Ruislip	Prevention of a public nuisance	Appendix 5
Jenna Naulls. 105b High Street, Ruislip, HA4 8JN	Prevention of a public nuisance	Appendix 5
Heather McNeill	Prevention of a public nuisance	Appendix 5
Jhini Mukherjee - Responsible Authority for Licensing	Prevention of a public nuisance	Appendix 5

6.0 BACKGROUND INFORMATION

- 6.1 Specified Designated Premises Supervisor

Aditya Nandal.

- 6.2 Applicant / Licence holder

Raja Hospitality Ltd.

7.0 OFFICER'S OBSERVATIONS

- 7.1 Concerns over the management of the premises occurred during the COVID-19 lockdown in 2021; during which time officers witnessed the premises open and people inside eating and drinking. Fixed penalty notices were issued on the 3rd March 2021 for COVID-19 breaches.

Post lockdown, the premises began operating as normal however, problems resumed in summer 2021. Complaints started to be reported by residents of loud music emanating from the premises. The premises were informed in writing about the complaints and were advised that they would be monitored by regulatory officers until compliance was achieved.

The Anti-Social Behaviour Team attended the premises on numerous occasions and witnessed noise nuisances and despite numerous warnings, further breaches were witnessed by the Anti-Social Behaviour Team. A noise abatement notice was served on the

9th October 2021. One week later on 16th October 2021, Anti-Social Behaviour Team officers witnessed a breach of the noise abatement notice.

On Sunday the 7th November 2021, reports of fireworks being let off from the roof of the premises were received by the Anti-Social Behaviour Team. This caused numerous problems to nearby residents who had been disturbed on numerous weekends previously. The premises then moved the display to a nearby alleyway. This is deeply concerning that with no health and safety checks in place this had the potential to cause damage to property and injury to residents.

Despite the warnings from the licensing authority and Anti-Social Behaviour Teams, the premises has continued to breach primary legislation relating noise related legislation.

7.2 Officer Visits

10th September 2021

I carried out a visit to the premises along with Lois King, Principal Licensing Officer. We met with the manager on site. A planned meeting with residents by the management of the premises along with a list of proposals was shown to me. These proposals were to install extra glazing of windows, regular noise checks and the use of a decibel metre device.

At the time of the visit no regulated entertainment was provided to customers. Patrons were eating and drinking inside. Speakers have been placed to the outside where there are tables and chairs situated. Only soft background music could be heard. The premises were compliant with the conditions of the licence.

7.3 Representations

Prevention of a Public Nuisance

The representations that have been received by residents echo what the Anti-Social Behaviour Team officers have witnessed. Noise from regulated entertainment has been a constant problem for nearby residents. Residents have been patient and have co-operated with the investigation by Hillingdon Council Regulatory Teams. This has been sufficiently supported by Cllr Corthorne. Residents have had to cope with noise and disruption. Officers have had to attend on numerous occasions to complainants' properties on late evenings and during the early hours of the morning. Residents have had to bring this matter to the attention of their local ward councillors for support.

7.4 Photos – Appendix 6

Photo 1 – Pavement Licence area. Outside speakers are placed in this area.

Photo 2 – More images of the outside area

Photo 3 – Entrance to the premises

Photo 4 – Blue Notice advertising the review

8.0 Relevant sections of S.182 Guidance

The purpose of the Guidance

8.1 **At paragraph 1.7**, "This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality."

Public nuisance

8.5 **At paragraph 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."

8.6 **At paragraph 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."

8.7 **At paragraph 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."

8.8 **At paragraph 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 the 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."

8.9 **At paragraph 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 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance as customers enter and leave."

- 8.11 **At paragraph 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."
- 8.12 **At paragraph 16.55** On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 music as if music were regulated entertainment Act permits a licensing authority to lift the suspension 74 and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

9.0 Relevant sections of Hillingdon's Licensing Policy

12.0 Prevention of a public nuisance

- 9.1 **At paragraph 12.1** "Licensing Sub Committees will be mindful that licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises. When addressing public nuisance, the applicant should identify any issues that are likely to affect adversely the promotion of the licensing objective to prevent public nuisance. They should then include in the operating schedule how they will deal with those matters. The concerns mainly relate to noise nuisance from within the premises or from the use of any outside areas, light pollution, smoke and noxious smells. Due regard will be given to the impact these may have and the Licensing Authority will expect operating schedules to satisfactorily address these issues."
- 9.2 **At paragraph 12.8** Following the grant of a premises licence, the Council's Environmental Protection Unit, Elected Members and/or interested parties such as local residents and businesses can apply to the Licensing Authority for review of the licence if they consider that the Prevention of Public Nuisance objective has not been met.
- 9.3 **At paragraph 12.9** The Licensing Authority's Licensing Officers will conduct inspections of licensed premises to ensure that the conditions relating to the prevention of public nuisance are being complied with.
- 9.4 **At paragraph 12.10** High risk or poorly managed premises will therefore be subject to a higher frequency of inspections than low risk and well managed premises. Some of these inspections will be unannounced and conducted whilst the premises are in use for the purpose of the licence.

9.5 **At paragraph 12.11** The Council's Licensing Officers and Environmental Protection Officers will work closely with the Council's Anti-Social Behaviour Investigations Team, requesting monitoring visits of specific premises and receiving feedback regarding the witnessing of statutory noise and public nuisance or the breach of licence conditions.

17.0 Representations

9.4 **At paragraph 17.1,** "This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy."

9.5 **At paragraph 17.2,** " Representations can be made to the Council, as Licensing Authority, by a 'Responsible Authority' or by 'Interested Parties' which include bodies or individuals who live in the vicinity of such a premises, and residents association, trade associations and other businesses operating in the vicinity. Representations can be made concerning:-

- Applications for new premises licences or club premises certificates
- Applications to vary premises licences or club premises certificates
- Personal licence applications on criminal grounds (only by the Police)"

9.6 **At paragraph 17.3,** "Responsible Authorities are the public authorities specifically designated under the Licensing Act 2003 to be consulted on all licence applications and are also entitled to make representations."

22.0 Reviews

9.7 **At paragraph 22.1** At any stage following the grant of a premises licence or a club premises certificate, an application for a review application can be submitted to the Licensing Authority by a Responsible Authority, any Elected Member or an Interested Party in connection with any of the four licensing objectives.

9.8 **At paragraph 22.5** Premises subject to review must display a statutory notice so that it is visible to passers-by, stating the ground for review and advising those who wish to make a representation to write to the Licensing Authority.

9.9 **At paragraph 22.6** The Licensing Authority will also publish similar notices on the Council's website.

10.0 LEGAL COMMENTS

10.1 When consideration is given for an application for review of a Premises Licence, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Members should note that each objective is of equal importance.

- 10.2 An application for review of a premises licence may be made pursuant to s.51 of the Licensing Act 2003 and is essentially governed by [Licensing Act 2003, reg.29 of the Licensing Act 2003 \(Premises licences and club premises certificates\) Regulations 2005/42](#), [Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)) and s.182 Secretary Code of Guidance.
- 10.3 A the responsible authority, or any other person, may apply to the relevant Licensing Authority for a review of a premises licence. The applicant responsible authority may be part of the same local authority as the Licensing Authority s.53 Licensing Act 2003.
- 10.4 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. At the hearing, the Sub-committee must, having regard to the application and any relevant representations, take such of the steps following steps (if any) as it considers appropriate for the promotion of the licensing objectives:
- modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months; and/or
 - revoke the licence

For this purpose, the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

- 10.5 The Sub-Committee must also have regard to the London Borough of Hillingdon's Statement of Licensing and the Secretary of State's Guidance issued under the Licensing Act 2003 when deciding what action, if any, to instigate. The terms of the Statement of Licensing Policy and Guidance are highly persuasive but are not binding on the Licensing Sub-Committee.
- 10.6 The Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy and or Guidance if it considers there are clear and justifiable reasons to do so. Full reasons must be given if this is the case.
- 10.7 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. Those who have made representations in respect of an application may choose to rely upon their written representations or they may attend the hearing and can be represented by any person whether that person is legally qualified or not ([reg.15 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)).
- 10.8 The Licensing Authority can determine its own procedure to be followed at a hearing, which should be the procedure contained within its Statement of Licensing Policy, which is made publicly available ([s.9](#) and [s.183](#); [reg.21 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)).
- 10.9 At the beginning of the hearing, the Licensing Authority will explain its procedure and the hearing takes the form of a discussion led by the Licensing Authority with its members being able to ask any question of any party or other person appearing at the hearing ([regs 17, 22 and 23 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)). Cross-examination is not permitted unless the Licensing Authority considers that the case is such that it is required ([reg.23](#)). All parties must be allowed an equal maximum period of time to make their representations and address the Licensing Authority ([reg.24](#)).

10.10 In considering representations, the Licensing Authority may take into account documentary or other information produced by a party in support of their position, either before the hearing or, with the consent of all other parties, at the hearing ([reg.18](#)). The Licensing Authority may exclude the public from all or part of a hearing where it considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public ([reg.14](#)).

10.11 The Sub-Committee can only consider matters within the application or that have been raised through relevant representations from and each application will be decided on a case by case basis.

10.12 Relevant representations are those that relate to the effect of the granting of the application on the promotion of the licensing objectives made by an interested party or responsible authority that have not been withdrawn and are not, in the opinion of the relevant licensing authority, frivolous, vexatious or repetitious s.51(4)(b)(i) and (ii).

10.13 The Sub-Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In deciding what remedial action, if any, it should take the Sub-Committee must direct its mind to the causes or concerns which the application and representations identify.

The remedial action should generally be directed at these causes or concerns and should always ensure that any response is necessary and proportionate.

10.14 In deciding which of their powers to invoke, it is expected that Licensing Authorities should seek as far as is possible to identify the cause/s of the concerns the representations have identified. Any remedial action should be directed at these causes and should be no more than an appropriate and proportionate response ([s.182 of the Guidance at 11.20](#)).

10.15 The provisions of the Act should not be used for punishment. A decision should be made in order to protect the licensing objectives.

10.16 Members are referred to the Secretary of State's Guidance on conditions, specifically paragraph 1.16 and chapter 10 which state that licensing conditions should be practical and enforceable, tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions will not be necessary if they duplicate a current statutory requirement. Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

10.17 Conditions should also be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions will not be necessary if they duplicate a current statutory requirement. Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

10.18 Breach of a condition in a licence carries criminal sanctions. Conditions must therefore be clear and precise in their terms, not just clear to those having specialised knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander who may have no knowledge of licensing at all - [Crawley BC v Attenborough \[2006\] EWHC 1278 \(Admin\); \(2006\)](#).

10.19 The Sub-Committee must ensure that all licensing decisions have:

- A direct relationship to the promotion of one or more of the four licensing objectives
- regard to the Council's statement of licensing policy
- regard to the Secretary of State guidance
- there must not be a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

10.20 Where a decision is made that is contrary to or a departure from the statement of licensing policy and the guidance, that decision must clearly state on what basis a decision was made to depart from the policy or guidance.

10.21 The Sub-Committee must consider the application on its own individual merits and take into account all relevant matters then determine the application by taking the steps it considers appropriate and proportionate to promote the licensing objectives.

10.22 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective.

It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence.

In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems.

10.23 The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings.

10.24 Where the Sub-Committee determines an application for review it must provide written notice and reasons for its decision.

10.25 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions have due regard to the need to:

- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.26 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics these are:

- i. age
- ii. gender reassignment
- iii. being married or in a civil partnership
- iv. being pregnant or on maternity leave
- v. disability
- vi. race including colour, nationality, ethnic or national origin
- vii. religion or belief
- viii. sex
- ix. sexual orientation

10.27 The licence holder, applicant for review or any party that made relevant representations have the right to appeal the decision of the Licensing Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified in writing by the Licensing Authority of its decision.