

LICENSING SUB-COMMITTEE A – 24 JUNE 2024

APPLICATION FOR A PREMISES LICENCE – BRAZIL TROPICAL, 56 CHERTSEY ROAD, WOKING

Executive Summary

This report considers an application for a Premises Licence (PL) for the above premises.

Recommendations

The Committee is requested to:

RESOLVE THAT the report be considered and are required to identify what steps, if any, need to be taken to determine the application having regards to the 4 licensing objectives.

The Sub-Committee has the authority to determine the above recommendation.

Background Papers:

Appendices

1. Application
- 1b. Plan
2. Location of premises
- 2b. Street view
- 2c. Photos or rear of premises
3. Licence
- 3b. Plan
4. Letter from Surrey Fire and Rescue Service
5. Correspondence from Licensing Authority to agent
6. Public Objections
7. Environmental Health Objection and agent negotiation
8. Licensing Policy Cumulative Impact Zone
9. Cumulative Impact Zone Policy Information
10. Local Premises Summary
11. Councillors Handbook (reference)
12. Pool of Conditions (reference)

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Application for a Premises Licence – Brazil Tropical, 56 Chertsey Road, Woking

1.0 Summary of Proposal

Application Type: New Premises Licence

Variation: No

Site Address: 56a-58 (First Floor) Chertsey Road, Woking, Surrey, GU21 5BG

Applicant Mr Manuel Rocha of 'Rochaconsultancy' Unit 35 Battersea Business Centre, 99-109 Lavender Hill, London, SW11 5QL

on behalf of

Erica Tatiane De Medeiros, Director, Brazil Tropical Ltd , 3rd Floor, Office 5, 21 Knightsbridge, London, SW1X 7LY

Application Ref: 24/00157/PREMIS

2.0 Description of Premises

2.1 The premises is proposed to be a Café and restaurant, it will expand into an area adjoining the upper floor of a current licenced premises which is located at 56, also called Brazil Tropical.

3.0 Details of Proposal and Operating Schedule

3.1 Brazil Tropical already holds a premises licence 23/00241/PREMIS, which covers downstairs and half of upstairs.

3.2 The upstairs has been knocked through and made larger in to 56a and 58 Chertsey Road. This licence is for that new area only. The applicant wishes for 2 premises licences to run concurrently.

3.3 The application seeks to license the premises for the sale of alcohol for consumption on and off the premises.

- Monday to Thursday 11:00 - 22:00
- Friday, Saturday and Sunday 11:00 – 22:30

4.0 Promotion of Licensing Objectives

4.1 Each application will be given individual consideration on its merit. Nothing in the Licensing policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in the Licensing policy shall override the right of any person to make representations on an application or seek a review of a licence where provision has been made for them to do so in the Act.

4.2 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- The prevention of crime and disorder;

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- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

4.3 The operating schedule submitted in the application form, which is attached in **Appendix 1**, shows a list of proposed conditions that the applicant has put forward to describe the steps they intend to take to promote the four licensing objectives.

5.0 Relevant Representations

5.1 The following representations have been received in relation to the application:

Responsible Authorities

Surrey Police:	No objections have been received.
Surrey Fire and Rescue Service:	No objections have been received.
Environmental Health (WBC):	An objection has been received
Planning Authority (WBC):	No objections have been received.
Social Services (SCC):	No objections have been received.
Trading Standards:	No objections have been received.
Public Health:	No objections have been received.
Home Office Immigration Dept:	No objections have been received.

Interested Parties

Members of Public:	4 objections have been received.
Woking CCTV	No objections have been received.
Woking Community Safety	No objections have been received
Woking Planning Enforcement	No objections have been received

5.2 The representations received object to the application on the grounds of the prevention of public nuisance, public safety, prevention of crime and disorder and the protection of children from harm.

5.3 The majority of the public representations received are from residents of Enterprise Place, a residential dwelling located close to the premises.

6.0 Policy Considerations

6.1 In making its decision, the Sub-Committee is obliged to have regard to National Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy. The Sub-Committee must also have regard to all of the representations made and the supporting information presented by all parties.

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The Licensing Officer highlights the following relevant sections taken from the '*Licensing Policy for Woking Borough*' should be considered as part of this application.

6.0 Fundamental Principles
<p>6.3 The Council recognises that public houses, nightclubs, restaurants, hotels, theatres, private members clubs, concert halls and cinemas all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. In considering applications, regard will be given to those differences and the differing impact these will have on the local community.</p> <p>6.4 The Council can only attach conditions to licences where necessary to ensure the licensing objectives are served and may include conditions drawn from the Pool of Conditions relating to the licensing objectives contained in the guidance issued under the Act. When considering conditions, the Council will focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned and those matters which are within the control of the applicant on the premises and in the vicinity of those premises. Whether or not incidents can be regarded as in the vicinity of licensed premises is a question of fact and will depend upon the particular circumstances of the case.</p> <p>6.6 The Council acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are away from the premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.</p>
7.0 The Licensing Objectives (Prevention of Crime and Disorder)
<p>7.1 Paragraph 2.1 of the national guidance states '<i>Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership</i>'.</p> <p>7.2 The Council will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises as they seek to enter or leave.</p> <p>7.3 In addition to the requirement for the Council to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and to do all it reasonably can to prevent, crime and disorder in the Borough.</p>
8.0 The Licensing Objectives (Public Safety)
<p>8.1 The Council will carry out its licensing functions with a view to promoting public safety and will seek to ensure that licensees take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.</p>
9.0 The Licensing Objectives (Prevention of Public Nuisance)
<p>9.1 The Council will carry out its licensing functions with a view to promoting the prevention of public nuisance and will seek to ensure that licensees take measures to minimise the impact of licensable activities at their premises on people living, working</p>

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or sleeping in the vicinity. The prevention of public nuisance can include low-level nuisance affecting a few people living locally, as well as major disturbance affecting the whole community.

6.2 The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

6.3 Options available for members:-

- i) Grant the application on the terms and conditions contained in the operating schedule along with relevant mandatory conditions; under sections 19, 20 and 21 of the Licensing Act 2003
- ii) To grant the application modified to such an extent as considered appropriate in order to satisfy any relevant representations so as to adequately promote the licensing objectives;
- iii) to refuse the application

6.4 Should the Committee seeks to depart from national and local policy then it should provide clear and detailed reasons what the 'exceptional circumstance' is that would allow us to depart from the policy.

6.5 The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

7.0 Premises Location

7.1 The Premises in question is a located on the upper floor of at 56a -58 Chertsey Road in Woking Town Centre.

7.2 On the existing premises licence, the downstairs is a restaurant with a small area upstairs for seating also, of note upstairs area has doors leading out to a balcony/terrace which is overlooked by residential flats. To the front of this premises there is a pedestrianised area, Chertsey Road which is overlooked by Offices.

7.3 The new Premises Licence is for the upstairs area only.

7.4 A map showing the location of the premises is attached as **Appendix 2**.

7.5 A street view of the location of the premises is attached as **Appendix 2b**.

7.6 Photographs of the rear of the property are attached as **Appendix 2c**.

8.0 Site History

8.1 Brazil Tropical has a premises licence for 56, Chertsey Road, which was granted 5 December 2023, The licence the subject of a Licensing Committee hearing. It was granted with conditions following representations from:

- 8 Members of the public

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- Environmental Health
- Planning Department and Community Safety

8.2 At Sub-Committee dated 4 December 2023, the licence was granted with the following additional conditions. **Appendix 3** for Licence and **Appendix 3b** for plan.

9.0 Existing Licence Brazil Tropical

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Sale of alcohol	Week Days	11:00 - 22:00
Sale of alcohol	Weekends	11:00 - 22:00

The opening hours of the premises

Opening hours	Week Days	07:00 - 22:30
Opening hours	Weekends	07:00 - 22:30

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On the Premises only

Conditions attached after a hearing by the licensing authority

- The roof terrace area to the rear of the premises will not be used by customers or staff or as a smoking area in order to minimise disturbance to the local residents.
- There will be no off sales from this premises.
- Sale of alcohol will cease at 22:30 and there will be no public on site after 23:00
- Tables and Chairs outside will be removed before or by 22:00 at the latest and no drinking will take place outside after this time.
- Alcohol sold or supplied to persons for consumption on the premises will be served with a substantial table meal and only whilst customer is seated.
- There will be no DJ's, Live Music, Recorded Music (i.e. regulated entertainment) or Karaoke held on this premises at any time.
- The business will play background music only at a volume which does not cause disturbance outside the premises.
- Windows to be kept closed after 22:00 every day. Doors to also be kept closed after 22:00 every day (except for ingress and egress)
- There shall be no vertical drinking.

9.1 On the 3 March 2024 the Local Authority received complaints from a member of the public stating that there had been incidents of noise and a report of fire.

9.2 The complaints and dates are set out below.

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Date	Complaint
09 December 2023	Live music being played. There is a man with guitar and microphone.
24 February 2024	Man playing keyboard
16 February 2024	BBQ at the front of the venue
03 March 2024	Smoke coming from premises, 4 industrial size converted to BBQ smokers. There were visible flames of fire. Barrels were in front of the Brazil Tropical and they were unattended and not supervised by anyone They were set up less than 1 meter from a tree, less than 10 meters from the closest residential property and less than 20 meters from the building which is home for more than 300 people. Fire services attended. 4pm Loud music being played with vertical drinking and people dancing on the first floor.

9.3 Surrey Fire and Rescue Service issued a warning letter dated 18 March 2024, following the incident on 3 March 2024. **Appendix 4.**

9.4 Following this report, a joint visit was conducted with Police and the Licensing Authority on the 10 April 2024. Building work was already underway at the premises, upstairs with the internal wall removed, downstairs being turned in to a Deli.

9.5 Advice from both the Police (Police Licensing Officer and Derrick Laing Licensing Officer for Woking Borough Council) was given that a full variation to the existing premises licence would need to be made as soon as possible as the plans were changing dramatically. As the existing Licence is for **On sales** of alcohol only, it was explained by the applicant that there will be no alcohol sold in the Deli for off sales.

10.0 Licence Application

10.1 On the 9 May 2024 an application was received from Manuel Rocha of 'Rochaconsultancy' on behalf of Brazil Tropical Ltd for a new premises licence.

10.2 A copy of the application is attached as **Appendix 1** and plan **Appendix1b.**

10.3 The application is for a "Café and Restaurant" and requesting the sale of alcohol from 11.00 to 22:00 Monday to Thursday and 11:00 to 22:30 Friday to Saturday and 08:00 to 23:00 Sunday, both for consumption on the premises and consumption off the premises.

10.4 Application summary

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Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Sale of alcohol	Monday to Thursday	11:00 - 22:00
Sale of alcohol	Friday and Saturday	11:00 - 22:30
Sale of alcohol	Sunday	11:00 - 22:30

The opening hours of the premises

Opening hours	Monday to Thursday	07:00 - 22:30
Opening hours	Friday and Saturday	07:00 - 23:00
Opening hours	Sunday	08:00 - 23:00

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On and off premises

- 10.5 It should be noted that under the Live Music Deregulation Act – any premises that is licenced for alcohol for consumption on the premises can legally have live/recorded music up until 23:00 without any need for it to be listed on the licence.
- 10.6 It is noted that none of the conditions imposed by Sub-Committee on the original licence have been added to this new licence application.
- 10.7 Consequently, should this licence be issued, it would also have the potential to have live/recorded music on site without any need to apply or be granted it.
- 10.8 Licensing Authority attended Brazil Tropical on the 9 May 2024, having two Premises Licences running concurrently at the same location is highly irregular, the conditions that were placed upon the existing licence after the hearing had not been fully added either.

On this visit it was noted by Licensing Officers that the downstairs of Brazil Tropical was now a Deli (Atelie da Linguica). The Licensing Authority has not received an application to vary the premises licence despite a number of contacts with Mr Rocha encouraging him to do so and therefore acting otherwise in according with the current Premises Licence plan. Also, of note there was Alcohol on display for sale behind the Deli, the premises is not permitted for off sales. It was discussed that a variation would be needed. We advised we would talk to the Agent.

- 10.9 Licensing Authority attempted to work with the agent and has sent several emails regarding the need for a variation to the current licence and the new application's conditions. Yet the agent has failed to address this, stating over the phone that he is "happy to go to Sub-Committee." **Appendix 5.**

11.0 Objections and representations received: i) Public Objections

- 11.1 As part of the application process, the Premises Licence Application was advertised both in a local paper (within the first ten days) and on the premises itself (for the full 28 days following the application) in line with legislation.
- 11.2 This gives members of the public time in which to make any relevant representations or objections to the application.

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11.3 As part of this application, the Licensing Authority has received a total of four objections from members of the public who either reside within the vicinity of this premises or have a valid reason for raising a concern over the application.

11.4 The Objections from the public are attached as **Appendix 6**.

11.5 The planning department have been consulted with and offered no objections; they have given the following comments detailing this decision:

“In Planning terms there’s no problem with the upstairs being used as a restaurant. Both floors seem to have Class E use and so can be used as a restaurant. On that basis, we didn’t raise any objections to the licence application as we believed it to be primarily to enable seated diners to consume alcohol.

Our concern would be if the primary use becomes as a pub/bar/drinking establishment with any dining only being a secondary/minor/ancillary element – that would need planning permission as a change of use.”

12.0 Objections and representations received: ii) Local Authority Objections

12.1 As a statutory consultee, an objection was received from the Environmental Health department 29 May 2024, on the same day the applicant put forward additional conditions. **Appendix 7**.

12.2 Conditions offered by applicant by way of negotiation:

- No vertical drinking. Table service only. *Reference to served with a meal should be added.*
- Clear and legible notices will be prominently displayed at the exit to remind customers to leave quietly and have regard to our neighbours
- Tables and Chairs outside will be removed before or by 22:00 at the latest and no drinking will take place outside after this time.
- The roof terrace area to the rear of the premises will not be used by customers or staff or as a smoking area in order to minimise disturbance to the local residents.
- Windows to be kept closed after 22:00 every day. Doors to also be kept closed after 22:00 every day (except for ingress and egress) – there are no doors or windows in the licensable area highlighted under this application.

12.3 Environmental Health request the following to be added.

- There will be no off sales from this premises.
- Sale of alcohol will cease at 22:30 and there will be no public on site after 23:00
- Alcohol sold or supplied to persons for consumption on the premises will be served with a substantial table meal and only and whilst customer is seated.
- There will be no DJ's, Live Music, Recorded Music (i.e. regulated entertainment) or Karaoke held on this premises at any time.
- The business will play background music only at a volume which does not cause disturbance outside the premises.
- Windows to be kept closed after 22:00 every day.

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- There shall be no vertical drinking.

13.0 Negotiations with the objectors

- 13.1 Pursuant to legislation, objections to an application for a premises licence are passed to the applicant so that they have the opportunity to contact those objectors and attempt to negotiate an amendment or a proposal of conditions to the application so that they would be happy to withdraw their objections and the licence could be issued without the need for a hearing.
- 13.2 All objections have been forwarded to the Applicant in line with the legislation.
- 13.3 We do not have any other evidence that Mr Rocha or the applicant have made any attempt to negotiate or discuss the raised concerns with the local residents, however attempts have been made to negotiate with Environmental Health.

14.0 The Cumulative Impact Zone

- 14.1 Woking Borough Council Policy – **Appendix 8**
- 14.2 The Premises upon which the application is for is located within Woking Borough Council's "Cumulative Impact Zone" (CIZ) – also known as a Saturation Policy.
- 14.3 The area within Woking Town Centre was determined by Woking Council and Surrey Police to contain a concentration of licensed premises within a small area of the town centre, of which was resulting in problems of anti-social behaviour, crime and disorder and that therefore an approach to Cumulative Impact was necessary as part of the licensing policy.
- 14.4 The Woking Town Centre Saturation Policy (Cumulative Impact Zone) forms part of the Council's Licensing Policy – section 7.7.
- 14.5 The Policy relating to the Cumulative Impact Zone states that, "*Within the zone, there will be a presumption that all applications for new premises licences, new club premises certificates or variations to existing licences of these type (that are likely to add to the cumulative impact zone) will be refused, following a relevant representation. In making applications for new or varied licences, it will be for the applicant to demonstrate in their operating schedule how they will not add to the cumulative impact of the area in one or all of the licensing objectives.*"
- 14.6 The relevant section of Woking Borough Council's Licensing Policy relating to the Cumulative Impact Zone and the plan of the Cumulative Impact Zones in Woking are attached as Appendix 4.
- 14.7 The existence of a Cumulative Impact Zone policy means that there is a presumption of refusal of applications for new licences within the defined area. However, the Policy will only be triggered in the event that someone submits an objection to the application which then drives it to a licensing committee hearing for determination.
- 14.8 The policy shall only be overridden in exceptional circumstances. The presumption of refusal can be rebutted by the Applicant if they can demonstrate in their operating schedule that there would be no negative cumulative impact on one or more of the licensing objectives.

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- 14.9 The policy is aimed at the global effect of licences within the area as a whole and not at the quality of the operation or the fitness of the licensee.
- 14.10 The Applicant has made no reference in his operating schedule to the Cumulative Impact Zone and how the premises will be operated and not add to the existing problems within the area.
- 14.11 Whilst the Cumulative Impact Zone (CIZ) and Saturation Policy can be difficult topics to fully understand – we have included excerpts from a document written by a specialist in Licensing law, Gerald Gouriet QC, who wrote an extensive piece on the importance of Cumulative Impact Zones for the Institute of Licensing, which should be born in mind when considering this application. This is also included in **Appendix 9**.
- 14.12 The policy is clear in that there will be a presumption that all applications will be refused upon receipt of a valid representation, and the Licensing Authority should only depart from this is ‘exceptional circumstances’ where the applicant is able to show that their premises will not add further to any issues in a specific area.
- 14.13 It is important to remember that the CIZ is not specifically about how well a premises is run – or the conditions directly applying to that premises – but whether the business will affect the area as a whole simply by being there.
- 14.14 An example of an ‘exceptional circumstance’ can be given to help clarify this.
- 14.15 The Policy will only be triggered in the event the premises is located within the defined area and a representation is received. If no representations are received, then the application is granted in the terms applied for.
- 14.16 The Licensing Policy CIZ was put in place to prevent further issues in an area already suffering from Anti-Social Behaviour (ASB) on a regular basis. It is therefore important to bear the Policy in mind when making a decision – and ensure that the ‘exceptional circumstances’ are clear, concise and recorded.
- 14.17 There are currently around fifty-seven licenced premises located within in the CIZ.
- 14.18 Details of these premises in summary can be found in **Appendix 10**.

15.0 Noise nuisance in the area

- 15.1 Since the granting of the original Brazil Tropical premises licence in December 2023 there have been incidents of noise nuisance, anti-social behaviour and disturbances to local residents as described at **9.1** above.

16.0 Assisting Documentation

- 16.1 To assist the Licensing Committee, the Councillors Handbook is attached as **Appendix 11** and the ‘Pool of Conditions’ is attached as **Appendix 12**.

17.0 Summary

- 17.1 The residents within the area have concerns over running of the current Premises Brazil Tropical and its expansion on the upper floor creating Public Nuisance.
- 17.2 The Environmental Health have raised concerns over Public Nuisance and the conditions not being imposed on the new licence.

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- 17.3 The current licence is acting otherwise in accordance with the current plan and Off sales on its licence.
- 17.4 When taken into account with the information on the Cumulative Impact Zone (CIZ) and the guidance provided by Gerald Gouriet QC it is absolutely vital that we consider this application carefully and, should the decision be to follow the Council Policy, refuse the application.
- 17.5 Should the Licensing Committee be of the opinion that they should depart from the Policy then the reasons and outcome should be clear and concisely recorded.

18.0 Implications

Financial

- 18.1 There are no financial implications arising from this report. A nationally set application fee is charged to defray the cost of processing applications.

Legal

- 18.2 This Hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005
- 18.3 The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the promotion of the licensing objectives, and such departure must be supported by clear and cogent reasons
- 18.4 A right of appeal lies to the Magistrates Court within a period of 21 days from when the written decision is issued.
- 18.5 The licensing authority must act to promote the four licensing objectives which are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

Human Resource/Training and Development

- 18.6 None.

Community Safety

- 18.7 Addressed by considering the application.

Risk Management

- 18.8 The risks to the Council associated with determining an application are:
- Failure to undertake our statutory responsibilities within required timescales;

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- Making a decision that may be challenged via an appeal to the Magistrates Court with the possible consequence of costs being awarded against the Council; and
- Making a decision that compromises Community Safety.

18.9 These risks have been dealt with in the report under section 4.0 by highlighting that the Sub-Committee is required to determine this application for a premises licence under the Licensing Act 2003 having due regard to the four licensing objectives, national guidance, the local licensing policy, relevant representations and evidence presented at the hearings. Determining applications in this way will reduce the risk of the decisions of the Council being open to challenge via appeal to the Magistrates court and promote Community Safety in the Borough.

Sustainability

18.10 The four licensing objectives addressed in the Council's licensing policy, which the Sub-Committee is obliged to have regard to in making its decision, are in line with the Council's sustainability aims.

19.0 Conclusions

19.1 The applicant must satisfy the sub-committee and demonstrate that they have sufficient controls outlined within the operating schedule in place in order to uphold the promotion of all four of the licensing objectives.

19.2 The application must be determined on its own merits and based on the specifics of the premises applied for.

19.3 Members of the sub-committee are asked using the report, operating schedule, representations made, evidence it will hear at the hearing and responses to questions made, statutory guidance and the Council's licensing policy, may determine whether to grant the application as applied for, refuse in its entirety or grant with additional conditions and to give its decision with reasons.

REPORT ENDS