

## **Aylesbury Vale District Council**

### **DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE FOLLOWING A HEARING ON 13 OCTOBER 2009 HELD AT THE COUNCIL'S GATEHOUSE ROAD OFFICES, AYLESBURY**

#### **Application by Thames Valley Police for the review of the premises licence relating to Club Vibe, 33 Cambridge Street, Aylesbury, Buckinghamshire**

#### **Members of the Sub-Committee**

Councillor Tim Mills (Chairman)

Councillor Joan Poole

Councillor Peter Cooper

#### **Declarations of interest**

None.

#### **The application**

The Sub-Committee has given careful consideration to the application before it, namely, to review the premises licence relating to Club Vibe, 33 Cambridge Street, Aylesbury, Buckinghamshire.

The application was brought by Thames Valley Police on the grounds of the prevention of crime and disorder and the protection of children from harm. The police complaints about the premises include the unacceptable levels of anti-social behaviour and public order incidents associated with the premises such as fighting and disturbance mainly on a Friday and Saturday night at closing times.

In support of their complaints the police relied on town centre CCTV recordings of public order incidents immediately outside the premises. Some of these incidents we were told had resulted in arrests. At the hearing we were shown CCTV footage recorded on 30 May 2009 and 18 July 2009 showing Club Vibe customers fighting outside the premises at around 03.00 hours.

The Police also expressed concern about the conversion of the ground floor of the premises into a takeaway.

The Police made it clear, however, that they did not think it was necessary or appropriate to revoke the premises' licence but instead sought to attach tighter conditions to the licence in accordance with the licensing objectives.

In response to the application, the Council received a representation from Environmental Health; Mrs Malgorzata Wierzchowski and Mr Jacek Wierzchowski, residents of Rycote Place, the flats opposite the premises; and the Aylesbury Old Town Residents' Association.

Mr and Mrs Wierzchowski asked for the premises' licence to be revoked because of the 'terrible noise at night' making it impossible for them to sleep. They also expressed concern about 'fights in the street' and complained that the premises had made their living environment dangerous.

In support of their representation, Mr and Mrs Wierzchowski relied on previous complaints made to the Council about noise nuisance and disturbance. In order to substantiate their complaints they had also recorded from their flat the disturbance they had suffered at night time using their own CCTV camera which also recorded sound. We watched and listened to some of this evidence during the hearing.

The Association's representation was stated to be 'on behalf of those whose homes are within the town centre area to which the cumulative impact policy applies'. The validity of this representation is an issue we will return to.

At the hearing, Mr Trevor Hooper, Licensing Officer, represented the police; Mr Paul Irwin represented Environmental Health; Mr Graham Aylett represented the Association and Mr and Mrs Wierzchowski also attended the hearing.

The premises licence holder, Mrs Jeanette Lorraine who is also the designated premises supervisor, attended the hearing with her husband, Mr Dave Lorraine, who is also involved in the running of the premises.

At the beginning of the hearing we asked Mr Aylett whether he could lay claim to representing any specific residents living in the vicinity of the premises who had complained about Club Vibe. Other than Mr and Mrs Wierzchowski he could not. We also enquired whether the Association had directly received any complaints about this premises and Mr Aylett confirmed they had not.

We needed to do so because the purpose of a review hearing is to discuss problems caused by the individual premises which is the subject of a review application and not general problems allegedly caused by, or the cumulative impact on the licensing objectives of, a concentration of licensed premises in an area.

The effect of a cumulative impact or saturation policy is to create a rebuttable presumption that applications for new licences or variations that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate that there will be no negative cumulative impact on the licensing objectives.

In addition, in order to make a valid representation, the Association is required to demonstrate that it is representing the actual concerns of people who live in the vicinity of the premises.

On the facts, therefore, we had to reject the Association's free standing representation but because Mr and Mrs Wierzchowski wanted Mr Aylett to help them present their case he nonetheless participated in the hearing.

We do, however, take this opportunity to point out to the Association that not all residents of the 'inner relief road area' live in the vicinity of Club Vibe. The Licensing Act does not allow us to consider the interests of those residents who do not live in the vicinity of the premises. According to case law, whether or not a person lives in the vicinity of the licensed premises is ultimately a matter of fact to be decided by the licensing authority with the benefit of its own local knowledge.

Further, statutory guidance itself states that:

*“13.35 Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. The “cumulative impact” on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, “cumulative impact” relates to the effect of a concentration of many premises. Identifying individual premises in the context of a review would inevitably be arbitrary.”*

This extract puts beyond any doubt that the Association’s attempts to rely on the Council’s saturation policy in the context of this review application is entirely misplaced.

During the course of the hearing, our attention and the parties’ attention was drawn to the conditions proposed by the Police, Environmental Health and Mr and Mrs Wierzchowski. These were put to Mrs Lorraine and she confirmed to us that she wished to volunteer the following conditions in order to demonstrate to us that the problems complained about could be tackled without revoking her licence.

1. Before 23.00 hours, on the ground floor of the premises, any supply of alcohol shall be accompanied by food to be consumed on the premises only.
2. The provision of late night refreshment shall be for consumption on the premises only.
3. After 01.00 hours no new or existing customers shall be allowed to enter or re-enter the premises and no exception shall be made for customers who leave the premises in order to smoke.
4. After 23.00 hours, customers shall be prevented from taking any bottles, glasses or any other drinks containers from the premises.
5. After 23.00 hours, at least 2 door supervisors shall be stationed at the main entrance of the premises. As well as carrying out their usual security functions, such door supervisors shall be instructed to enforce conditions 3 and 4 set out above.
6. A colour CCTV system with a hard disk drive shall be installed inside the premises covering the entrance and the entirety of the public area of each floor including the bar. The system shall also be, maintained and operated correctly to the satisfaction of the Police. The recordings from the system shall be retained for a period of 28 days and shall be made available immediately on request to the Police and the Licensing Authority. If requested, the Police and the Licensing Authority shall be provided with DVD copies of the recordings within the stated time.
7. An incidents log or book shall be created and maintained which records all incidents at or immediately outside the premises concerning disturbance,

public nuisance, crime and disorder, public safety and the protection of children from harm.

8. All windows and doors shall remain closed, save for the opening and closing of doors to allow the ingress and exit of customers. Subject to fire safety regulations, the roof window shall be kept locked when the premises is used for licensable activities so that it cannot be opened by customers. The roof window shall also be fitted with blinds.
9. The illuminated signs displayed outside the premises shall be turned off at the following times:  
  
Sunday to Thursday: 00.00 hours;  
Friday and Saturday: 01.00 hours.
10. Within a period of 3 months commencing from the effective date of this decision, the licensee shall decide, in principle, whether or not to build a smoking balcony at the back of the premises and notify the licensing authority of her decision.

For our part, we are satisfied that all of these conditions relate to the representations made; are evidence based; are necessary in order to promote the licensing objectives and proportionate as to means. In some cases, they build on and substitute existing conditions and provide even tighter regulation. This will need to be borne in mind when redrafting the licence document.

In addition, Mrs Lorraine agreed to reduce the trading hours of the premises on Monday to Thursday to 00.00 hours and to reduce the opening hours to 00.30.

### **Decision**

We have listened to all the evidence and submissions and have read all the material. We considered carefully the review application, the relevant representation made, the statutory guidance and the Council's statement of licensing policy.

We noted that under the Licensing Act any regulation we impose must actually be necessary in order to promote the licensing objectives and must be supported by real evidence that it was required in the circumstances of the case.

We weighed carefully the need for greater regulation in order to promote the licensing objectives as well as Mr and Mrs Wierzchowski right not to be disturbed by unreasonable noise nuisance, against the rights of others to provide licensable activities.

We found the following:

Although the premises are in the town centre, Cambridge Street is a relatively quiet and narrow side street.

The premises are relatively isolated from other licensed premises.

The premises are located opposite and close to residential flats.

There is a history of complaints regarding music noise emanating from the premises and also disturbance caused by customers outside the premises. While some of these complaints predate the transfer of this licence to the current licensee in August 2008, it is clear that the disturbance has continued since then.

The premises are land-locked and there is no provision for smokers. This means that customers smoke outside the premises on Cambridge Street.

We considered revoking the premises licence or even reducing the operating hours of the premises but neither the Police nor Environmental considered this to be necessary and we agreed. Their views weighed heavily with us.

We believe the tighter controls volunteered by the licensee address the underlying causes of the problems raised by the review of this premises licence and we did not think that it was necessary to further reduce the hours of operation in addition to those volunteered by the licensee, or to limit the licence in the other ways suggested by Mr and Mrs Wierzchowski, in order to promote the licensing objectives.

We remind the licensee, however, that there is already a condition attached to the licence which states that only persons over the age of 18 will be permitted to enter the premises after 18.00 hours.

Although for the same reasons we did not think that it was necessary to apply any further restrictions to the non-standard timings, the following two points are worth clarifying.

First, the reference to 'all Bank Holidays' in Annex 2 of the licence document should in fact be 'on the eve of all Bank Holidays'.

Second, when the premises licence was varied on 22 March 2006, this is what the decision notice recorded:

**“Non-standard timings**

The non-standard timings detailed in the applicant's operating schedule are granted which means that in respect of all licensable activities on Christmas Eve, New Year's Eve and all Bank Holidays the hours are as follows:-

11.00 to 03.00. In addition the premises can remain open to the public for an additional 30 minutes but on New Year's Eve the premises can stay open to the public until 04.00.”

It is clear therefore that even on New Year's Eve the terminal hour for all licensable activities should be 03.00 hours and not 04.00 hours which is what the licence currently states. When the licence document is amended to reflect the other changes we have agreed, the opportunity will also be taken to correct this mistake and delete any other conflicting references concerning the operating hours on New Year's Eve.

As for condition 3 set out above, Environmental Health asked for an earlier time of 00.30 hours but we felt that the time recommended by the Police struck a fair balance

between regulating the use of the premises and permitting the licensee to operate her business viably.

We trust that the responsible authorities will continue to keep a close watch on this premises moving forward and, if necessary, take further action.

In this regard we note that there are other tools in Environmental Health's armoury which can be used in tackling noise from licensed premises. Examples include the Environmental Protection Act 1990, Noise Act 1996 and the Anti-Social Behaviour Act 2003.

We have taken into account Mr Irwin's assurances to continue to monitor noise levels and we hope that Environmental Health will be proactive in dealing with any problems which may occur in the future.

In particular, we note, that Mr Irwin intends to investigate the complaint about light nuisance which he had not previously been aware of, and Mrs Lorraine's agreement to co-operate.

We also issue this warning to the licensee. If you do not manage your premises better in the future or if it continues to cause problems, you may not be given another chance if your licence is reviewed again and your premises licence may be revoked.

Because we were informed that the takeaway use of the premises does not have planning permission we feel it is important that this decision notice makes it very clear to the licensee that the planning and licensing regimes are entirely distinct. This means that our decision in the context of this review application does not in any way affect the need for the licensee to apply for and obtain planning permission. Failure to do so may result in enforcement action.

#### **When this decision takes effect**

This decision does not take effect until the end of the period for appealing to the Magistrates' Court\* or, if the decision is appealed against, until the appeal is disposed of.

#### **Right of appeal**

All the parties (i.e. the responsible authorities and Mr and Mrs Wierzchowski) have rights of appeal to Aylesbury Magistrates' Court against this decision.

If you wish to appeal you must notify Aylesbury Magistrates' Court within a period of **21 days\*** starting with the day on which the Council notified you of this decision.

\*It is intended that this decision notice will be delivered to Club Vibe on Wednesday 21<sup>st</sup> October 2009. This means that any appeal must be lodged by **10<sup>th</sup> November 2009**. In the absence of an appeal, this decision will take effect on **11<sup>th</sup> November 2009**.