

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 22 DECEMBER 2009 HELD AT THE
COUNCIL'S GATEHOUSE ROAD OFFICES, AYLESBURY**

**Application by Mr Ebrahim Rostami to vary the premises licence for LJ'z, Unit 2,
Britannia Walk, Aylesbury, Buckinghamshire HP20 1ER**

Members of the Sub-Committee

Cllr Janet Blake (Chairman)
Cllr Timothy Mills
Cllr Peter Cooper

Declarations of interest

None.

The application

The Sub-Committee has given careful consideration to the application before it, namely, to vary the premises licence for LJ'z, Unit 2, Britannia Walk, Aylesbury.

The scope of the application is very limited as it seeks permission to extend the terminal hour for the following activities on Fridays and Saturdays only:

- recorded music, performances of dance, provision of facilities for making music, provision of facilities for dancing, provision of facilities similar to music and dancing (all indoors only): from 02.00 hours to 02.30 hours; and
- late night refreshment (indoors only): from 02.00 hours to 02.45 hours

If granted, the application would result in the premises being open to the public for an extra 15 minutes until 02.45 on Friday and Saturday nights.

At the time of the hearing, there was one representation from an interested party, namely, Mr James Foreman, who lives close to the premises. His representation expresses concern about noise nuisance and disturbance and specifically complains about an incident on 14 November 2009, when he says he could clearly hear music being played at the premises during what he presumes to be a sound check. Mr Foreman says he is also concerned about the disruption that that club goes will cause late at night.

The applicant, Mr Ebrahim Rostami attended the hearing in support of his application. Mr Foreman was not in attendance and had not provided any indication in advance of the hearing that he would not be attending. We were informed that Mr Foreman was formally notified of the hearing and that prior to the hearing Licensing Services had spoken with him on the telephone and he had confirmed his intention to proceed with his representation and to attend the hearing.

Thus we are satisfied that Mr Foreman was aware of the hearing and that he could have but did not provide any explanation for his absence. In the circumstances, we did not consider it necessary in the public interest to adjourn the hearing and we proceeded in his absence. We nonetheless considered his representation and made appropriate enquiries of the applicant to address the concerns raised.

A representation expressing opposition to the “bit-by-bit approach to extending hours” was received from Aylesbury Town Council but without any reference to the licensing objectives. The Licensing Services Manager wrote to the Town Council to give them a further opportunity to explain the basis of their objection but no further response was received. According to the Licensing Act 2003, therefore, their representation was not ‘relevant’, i.e. valid, and could not be taken into account.

We note that although the police had not made a representation, the applicant had agreed with the police to amend his application by volunteering the following conditions.

1. At 02.00 hours the lighting in the premises shall be raised in order to alert customers of the fact that the sale of alcohol has finished and to encourage them to leave.
2. On Fridays and Saturdays, if music is played after 02.00 hours, it shall be slow ‘wind down’ music.
3. On Fridays and Saturdays, from 02.00 until 02.45 hours, customers shall be encouraged to leave the premises in an orderly manner and once the customers have left, the external doors shall be locked.

Having voluntarily agreed these conditions with the police and amended his application accordingly, we simply take note of it. We note, however, that conditions attached to a licence have to be clear, precise and certain if they are to be properly enforced. That said, the underlying objective of these conditions is clear and, if nothing else, they usefully record the practical steps and assurances the applicant has provided the police.

The decision

We have listened to all the representations and have read all the material.

We have had regard to the statutory guidance issued under section 182 of the Licensing Act 2003, and the Council’s own licensing policy.

We confirm that in making our decision we have sought to promote the licensing objectives.

Under the Licensing Act, we cannot modify the conditions or reject the whole or part of the application merely because of unsubstantiated concerns or because we consider it desirable to do so. 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 are satisfied that in all the circumstances, including how Mr Rostami intends to run the premises, and the additional safeguards he has volunteered, the impact of the variation of the premises licence on the licensing objectives does not necessitate a rejection of the amended application.

We noted that the scope of the application was very limited and Mr Rostami's explanation for seeking this change. He told us that he wanted to create a longer gap between the last sale of alcohol and when the premises have to close so that customers leave gradually and of their own volition. This he argued would make it nice and easy for people to go home. The extra time according to Mr Rostami would promote the licensing objectives rather than making the situation worst.

We also noted that the application had not been opposed by either the police or Environmental Health and that they had actually assessed the potential impact of the variation. We have already referred to the amendments Mr Rostami made to his application to meet the requirements of the police.

As for Environmental Health, we were informed that they carried out a noise test which involved the playing of amplified music whilst leaving the doors of the premises open. This revealed that only a faint base sound could be heard at the rear of Mr Foreman's premises in contrast with the high ambient noise levels, the most notable source being the Iceland refrigerators below Mr Foreman's flat.

In addition, we had regard to the town centre location of the premises.

In response to Mr Foreman's complaint about the disturbance he had suffered on 14th November whilst amplified music was being played from the premises, Mr Rostami denied that the music could have come from his premises. He explained that the premises was not equipped with any music system at that time and thus it was not possible for the music to come from his premises. In the absence of any information to the contrary, we accepted the first hand account provided by Mr Rostami.

We would, however, specifically draw to Mr Rostami's attention the need to proactively manage the potential noise problems that could arise from the seating area at the front of the premises in the summer months and noise breaking out if the doors are left open. Mr Rostami assured us that he was alert to these risks and that he would run these premises just as successfully as his other late night venue. Otherwise, the responsible authorities and Mr Foreman will be able to apply for the premises licence to be reviewed if unreasonable disturbance is caused.

If, once the premises start trading, music being played at the premises does cause a noise nuisance to Mr Foreman, we would advise him to contact Environment Health.

Conditions

Having regard to the representations made, we are satisfied that no further conditions are necessary in order to promote the licensing objectives.

The mandatory conditions and the conditions volunteered by the applicant (i.e. the details of the amended operating schedule) have not been reproduced in this decision notice but will be set out in the licence document itself.

The effective date of this decision

This decision takes effect immediately. However, the premises cannot be used in accordance with this decision until the licence (or a certified copy) is kept at the premises and a summary of that licence (or a certified copy) is displayed at the premises. These documents will be issued by Licensing Services as soon as possible.

Right of Appeal

Mr Foreman has a right of appeal to Aylesbury Magistrates' Court against this decision. He can appeal against the variation of the licence or on the grounds that different or additional conditions should have been imposed.

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.