

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 6 APRIL 2010 HELD AT THE COUNCIL'S
GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by W H Brakspear & Sons Ltd to vary the premises licence for The
Emperor's Lounge, 31 Buckingham Street, Aylesbury, Buckinghamshire.**

Members of the Sub-Committee

Cllr Timothy Mills (Chairman)
Cllr Judy Brandis
Cllr Michael Rand

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 the Emperor's Lounge, 31 Buckingham Street, Aylesbury, Buckinghamshire.

In general terms, the application seeks permission to provide new types of regulated entertainment (namely, recorded music and the provision of facilities for making music and for entertainment similar to music and dancing) and to provide late night refreshment; to extend existing finish times for alcohol, live music and dancing and to extend the time the premises is open to the public until 02.00 hours from Sundays to Thursdays and until 03.30 hours for Fridays and Saturdays.

The application received representations from the Police and Environmental Health, acting in their capacity as responsible authorities; and residents of a nearby flat and Aylesbury Town Council, acting in their capacity as interested parties. The identity of these residents is an issue we will return to.

At the hearing, the applicant was represented by its Business Development Manager, Mr John Beazley and he was supported by the designated premises supervisor (DPS), Mr Spyros Koumantarakis; Mr Trevor Hooper represented the Police; Mrs Jane Heywood represented Environment Health and the residents of the nearby flat were represented by the wife.

The Town Council were not represented at the hearing and had not indicated prior to the hearing whether or not they would be attending. We, however, were satisfied that it was in the public interest to proceed in their absence. Although we nonetheless took their representation into account, given that their concerns overlapped with the other much more detailed representations we had received, it did not receive focussed attention.

Unusually, the couple asked for their full address and their identity not to be publicly recorded or published for security reasons because they are both serving police officers. One of them has a particularly sensitive role in the police and argued that their personal address should not be disclosed because access to it is even restricted within the police force.

The couple's details were disclosed to the applicant and Mr Beazley confirmed at the hearing that he did not object to their request.

Given the circumstances, we agreed to hold the hearing in private because, in accordance with the hearing regulations, the public interest in so doing outweighed the public interest in the hearing taking place in public. In actual fact, we did not need to ask the public or press to leave because only the parties were in attendance.

We also agreed that their names and address should not be recorded in this decision notice.

Our consideration of this application was against the background of a contested variation application made by the applicant last year for the premises which was decided following a hearing on 4 August 2009.

The Police objection was detailed in a report dated 8 March 2010 and during the hearing Mr Hooper confirmed that the Police objected to the extension of hours on Friday and Saturday nights only. The Police based their objection on the following facts and concerns.

The concentration of licensed premises in Aylesbury town centre and the potential for approximately 5,500 persons to be in the town centre late at night.

Currently, the sale of alcohol in the town centre generally ceases by 2.00am by which time most premises are closed but a few remain open for a further 30 minute "wind down period".

There is one notable exception according to the Police. There is only one licensed premises in the town centre that can sell alcohol until 3.00am and can remain open to the public until 3.30am.

Policing the town centre for an even longer period of time would have an even greater impact on the ability of the police, amongst others, to respond to incidents.

The town centre (as defined by the inner ring or relief road) contains a large residential population of well over 600 residents and that there are many residents who live in close proximity to the premises. Longer licensing hours would, according to the Police, inevitably affect their quality of life.

The cumulative impact of the total number of alcohol related incidents that the Police already have to deal with in the town centre. According to the Police, longer licensing hours would lead to excessive drinking and the potential for more and later alcohol fuelled violence and anti-social behaviour.

The Police relied on the Council's saturation policy and argued that an additional hour would mean an unknown number of people remaining in the town centre later at night and thus the cumulative impact of the conduct and behaviour of customers would be greater.

The Police argued that the saturation policy, as well as the additional resources the Police have invested in the town centre especially at the weekends have greatly helped to reduce the number of alcohol related incidents. They did not wish to see this progress undermined.

The Police acknowledge that the Licensing Act has resulted in customers coming into the town centre later but have noticed that many consume alcohol at home before going out. A practice the Police called 'pre-loading'.

Concern was expressed about customers leaving the premises and either loitering in the town centre or walking to Cambridge Street where takeaways with longer trading hours are situated.

As well as basing their objection on the impact the extension of hours at the weekend would have on crime and disorder and public nuisance generally, the Police also relied on a number of specific complaints about the premises.

The Police noted that the premises had historically been the subject of noise complaints. Mr Hooper, in fact, had visited the premises on a number of occasions in response to noise complaints and issued warnings. The most recent complaint he had responded to was on 5 February 2010.

According to Mr Hooper, although the DPS was at the premises, he had no control of a function that was taking place in the rear of the premises which in itself was a breach of the conditions of the premises licence. This is because the premises is only permitted to provide live music in the centre of the premises. This is a condition Mr Beazley volunteered at the previous hearing because the rear of the premises at that time had poor sound proofing qualities.

Mr Hooper also complained about the fact that since assuming his role at the premises the DPS had not attended a single pub watch meeting which once again was a breach of the conditions of the premises licence.

Environmental Health based their representation on the fact that since the previous variation application, they had continued to receive noise complaints and queried whether further noise insulation works were required in line with the insulation works which had already been carried out to the rear of the premises.

The representation also mentioned that the licensee had not been proactive in contacting Environmental Health about the setting of the noise limiter. This also was a breach of the conditions of licence.

The representation from the couple who live in a top floor flat very close to the premises objected to the variation application, as they had to the variation application made by

the premises last year. They complained about excessive noise from the premises due to discos and bands performing at the back of the premises.

Their representation noted that when the premises was closed after the last hearing for a number of months there were no noise problems. However, since the premises re-opened amplified music from the premises had disrupted their home life.

They also specifically complained about the incident on 5 February which the Police mentioned too. They complained that the music was so loud that it was distorted and their walls were vibrating from the bass. They had to call the police twice and complained about the premises providing entertainment in breach of the conditions of the premises licence.

On that occasion, the husband actually went inside the premises twice to complain about the noise. According to him, the DPS was unable to control the situation and apparently claimed that the organiser had lied to him about the event and that they kept on turning the music back up. The disturbance, the couple claimed, lasted until 1.30am.

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.

As often is the case with contested licensing applications, there are competing rights at stake and we have sought to strike a fair and proportionate balance in coming to the decision that we have.

We are satisfied that in all the circumstances, the impact of the variation of the premises licence on the licensing objectives necessitate a rejection of part of the application.

We found for the reasons cited by the Police that the Council's saturation policy applied.

A saturation or cumulative impact policy deals with the cumulative impact on the licensing objectives of a concentration of licensed premises in an area.

The effect of the 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.

Although Mr Beazley sought to rely on a document he said he had downloaded from the Council's web-site purporting to explain the scope and intent of the Council's saturation policy, all that matters is the final and approved version of the Council's Licensing Policy Statement. Section 6 of that document is concerned with this issue and is effectively a statement of the Council's intent.

We are satisfied that allowing the premises to stay open until 03.30 hours on Saturday and Sunday mornings will add to the cumulative impact and will have an adverse impact on crime and disorder and public nuisance. We accept that longer and/or later drinking hours gives rise to the real potential for customers of the premises causing problems later at night.

According to the Police, one of the key controls in pro-actively managing alcohol fuelled incidents is opening hours. This is a conclusion the Police have come to based on their practical experience of policing Aylesbury town centre week in and week out, and we thus attach considerable weight to it.

In fact, when Mr Hooper asked Mr Beazley whether extending opening hours by an hour on Friday and Saturday nights would promote the licensing objectives, he acknowledged that it was "hard to make that case".

Although Mr Beazley maintained that an additional hour would not make a material difference, for the many reasons we have already cited, we disagree. Mr Beazley also argued that staggered closing times would if anything have a beneficial effect by reducing the number of people on the streets at any one time. Mr Hooper rejected that suggestion arguing that if that meant longer and later drinking times, especially after the end of the late night shift patterns for police officers, it would certainly have an adverse impact on the licensing objectives. This we agree with.

Turning now to the issue of noise nuisance arising from amplified music. It is not often that noise complaints are substantiated by residents directly affected by the disturbance and are sufficiently serious to result in representations by both the Police and Environmental Health expressing concern.

We accept the complaints we have received which also justify the refusal of part of the application.

Because it is not sound-proofed, the central part of the premises in particular gives us cause for concern.

When asked by Mr Beazley how she could be sure that the premises was responsible for the loud music disturbing her, the wife told us if the noise is very loud either her or her husband go out and check so that they know their facts.

When asked why other residents in her block of flats had not complained, she explained that the other flats were rented out and that there was a high turnover of tenants which meant they did not bother to complain. She also mentioned that their flat was affected

the most because they were on the top floor and at the back where the disturbance is worst.

As well as concerns about the building itself, we also have serious concerns about the management of noise issues at the premises and the conduct of the DPS.

We start by noting our disappointment that despite the explicit warning set out in the decision notice issued following last year's hearing, the premises continued to provide entertainment without complying with the noise limiter condition.

Worst still, it seems that the DPS has knowingly and persistently used the premises for unauthorised entertainment even after being warned in writing by Licensing Services. The incident on 5 February 2010 witnessed by an aggrieved resident is a case in point.

Furthermore, the wife told us that because of excessive noise on Friday 2 May 2010 she went inside the premises to complain at 10.15pm and clearly saw a DJ playing music.

This resulted in the DPS admitting to us that when he bought the business he had not read the licence because he had left that to his son to do. He also admitted that "I have been breaking the law since November".

We believe the DPS has shown total disregard of licensing laws by playing recorded music without permission, by allowing performances of live music at the rear of the premises and by not fitting or setting a noise limiter to the musical amplification system.

Returning to the incident on 5 February 2010, the DPS told us that the "band was drunk" and presented a security problem and that it would never happen again. He reassured us that the situation was now under control.

The DPS subsequently sought to convince us the band were not disorderly and that "we just rode with it". The DPS denied that the music was excessively loud and said "it was liveable". Yet earlier he told us that the speakers used by the event organisers were "dangerous" and that the noise was like "an earthquake".

We have no hesitation in preferring the evidence of the Police and the residents as far the incident on 5 February 2010 is concerned. It is clear that the DPS was not in control and tolerating a disturbance and permitting a breach of the licence so as to avoid a potentially violent situation, does not amount to taking charge. We have doubts about the ability of the DPS to manage the premises properly.

As for failing to attend pub watch meetings, the DPS told us that he had asked his son to attend on his behalf and was not aware of his failure to do so. Yet the DPS had made no effort to check whether his son had been attending the meetings and made no enquiries about the issues arising from the meetings. Once again the failure of the DPS to take responsibility for his shortcomings is disappointing.

This, regrettably, is a totally unacceptable state of affairs.

For all of these reasons, we are firmly of the view that extending regulated entertainment finish times beyond alcohol finish times would undermine the licensing objective of preventing public nuisance.

There is one final issue that we need to address for the avoidance of doubt. The noise limiter condition already attached to the licence states as follows:

“A noise limiter shall be fitted to the musical amplification system in agreement with and to the satisfaction of an authorised Officer of the responsible Environmental Health Authority. The noise limiter shall be set and maintained at a level to be decided upon by the said officer.”

At the hearing, Mr Beazley, suggested that it was never intended that the condition should apply to recorded music despite the very clear wording of the condition. It would be a nonsense for a noise limiter condition to be applied to live music only and not recorded music. The potential for disturbance caused by amplified music is the same for both live and recorded music.

We accept, of course, that up until this variation application because the premises did not have permission to play recorded music, the noise limiter condition could only apply to live music. That no longer is the case. Ahead of making the application in hand, it was incumbent on the licensee to consider the impact of the noise limiter condition on the variation sought.

In any event, if there was any reasonable doubt about the wording of the noise limiter condition, in light of the very serious complaints and concerns about excessively loud music, we would not have hesitated to impose a condition to that effect.

For ease of reference, the new authorised times and permissions for the premises are as follows:

Alcohol (for consumption on the premises only)

Sun-Thurs: 10.00 to 01.30

Fri – Sat: 10.00 to 02.00

Regulated entertainment: live music; provision of facilities for making music and provision of facilities for entertainment similar to music and dancing (indoors only)

Sun-Thurs: 10.00 to 01.00

Fri – Sat: 10.00 to 01.30

Regulated entertainment: recorded music (indoors only)

Sun-Thurs: 10.00 to 01.30

Fri – Sat: 10.00 to 02.00

Regulated entertainment: provision of facilities for dancing (indoors only)

Sun-Thurs: 10.00 to 01.30

Fri – Sat: 10.00 to 02.00

Late night refreshment (indoors only)

Sun-Thurs: 23.00 to 01.30

Fri – Sat: 23.00 to 02.00

Open to the public

Sun-Thurs: 10.00 to 02.00

Fri – Sat: 10.00 to 02.30

The request to extend all permissions from the end of finish times on New Year’s Eve until the start times on New Year’s day are also granted.

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 will take effect when 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

All the parties have a right of appeal to Aylesbury Magistrates’ Court against this decision. The applicant can appeal against the refusal of part of the application and the other parties 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.

27 April 2010